



Donald R. Finch Docket Manager (303) 298-6115 1875 Lawrence Street Denver, CO 80202

AZ CORP COMMISSION BOCUMENT CONTROL Arizona Corporation Comm

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Via Overnight Delivery

Arizona Corporation Commission Docket Control-Utilities Division 1200 West Washington Street Phoenix, Arizona 85007-2996

RE: U S WEST § 271 Application Docket No. T-00000B-97-0238

To the Commission:

Enclosed are the original and ten copies of AT&T and TCG Phoenix's Comments on Unbundled Network Element Combinations, Switching, Transport and Enhanced Extended Links, and an unexecuted Verification of Ken Wilson. An executed Verification will be filed under separate cover, and the original will be entered as an exhibit at the workshop.

Yours truly,

Donald R. Finch

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Enclosures cc: Service List

BEFORE THE ARIZONA CORPORATION COMMISSION (E | V E)

CARL J. KUNASEK
Chairman
JAMES M. IRVIN
Commissioner
WILLIAM A. MUNDEL
Commissioner

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A7 CORP COMMISSION BOUGHENT COMMISSION

IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271 OF THE TELECOMMUNICATIONS ACT OF 1996 Docket No. T-00000A-97-0238

AT&T AND TCG PHOENIX'S COMMENTS ON UNBUNDLED NETWORK ELEMENT COMBINATIONS, SWITCHING, TRANSPORT AND ENHANCED EXTENDED LINKS

AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively "AT&T") file their comments on checklist item 2 (network elements), including unbundled network element combinations ("UNE-C" and "UNE-P"¹), checklist item 5 (transport) and checklist item 6 (switching), including the enhanced extended link ("EEL").

I. INTRODUCTION

The United States Congress conditioned Qwest Corporation's (formerly known as U S WEST Communications, Inc., hereinafter "Qwest") entrance into the in-region interLATA long distance market on Qwest's compliance with 47 U.S.C. § 271. To be in compliance with section 271, Qwest must "support its application with actual evidence demonstrating its *present* compliance with the statutory conditions for entry."²

¹ UNE-C will be used to refer to combinations of unbundled network elements ("UNEs") generally. UNE-P refers to the UNE platform, or the combination of UNEs used to provide residential or business local exchange service (loop, switching and transport).

² Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 (rel. Dec. 22, 1999), ¶ 37 (hereinafter "BANY Order").

As AT&T has previously stated in its Comments in this proceeding, the Arizona Corporation Commission ("Commission") is charged with the important task of ensuring that Arizona's local telecommunications markets are open to competition and that Qwest is complying with its obligations under both the state and federal law. Although the Federal Communications Commission ("FCC") is the final decision-maker on Qwest's compliance with its section 271 obligations, the FCC looks to the state commissions for rigorous factual investigations upon which the FCC may base its conclusions.

To conduct a rigorous investigation, one must understand both the legal standards that Qwest is held to and investigate Qwest's actual implementation of those standards.

Permitting Qwest to compete in the interLATA long distance market before it has fully and fairly complied with its obligations under section 271 will discourage, if not destroy, competition in both the local and long distance markets in Arizona.

Many a local competitor, including AT&T, has invested heavily in this State on the promise of open, fair competition in the local exchange market. AT&T requests that this Commission, through its rigorous investigation of Qwest's claims in this proceeding, ensure that the nascent local competitors realize that promise. To that end, AT&T respectfully submits these Comments addressing the topic of UNE-combinations, switching, and transport, including the EEL.

Through these workshops, the Commission is conducting its investigation of both Qwest's Statements of Generally Available Terms ("SGAT") and Qwest's actual compliance, or lack thereof, with the checklist items contained in 47 U.S.C. § 271(c)(2)(B). With respect to the SGAT review, a "State commission may not approve such statement unless such statement complies with [section 252(d)] and [section 251] and the regulations

thereunder." 47 U.S.C. § 252(f). Furthermore, a state commission may establish or enforce other requirements of state law in its review of the SGAT. *Id*.

To demonstrate compliance with the requirements of section 271's competitive checklist, Qwest must show that "it has 'fully implemented the competitive checklist [item]....'" Thus, Qwest must plead, with appropriate supporting evidence, the facts necessary to demonstrate it has complied with the particular requirements of the checklist item under consideration. Qwest must prove each element by a preponderance of the evidence. Furthermore, the FCC has stated that the most probative evidence is commercial usage along with performance measures providing evidence of quality and timeliness of the performance under consideration. Finally, as with any application, the "ultimate burden of proof that its application satisfies all the requirements of section 271, even if no party files comments challenging its compliance with a particular requirements.]" rests upon Owest. 6

II. LEGAL REQUIREMENTS

A. Unbundled Switching

1. Local Circuit Switching

Pursuant to section 271(c)(2)(B)(vi), Qwest is required to provide "[1]ocal switching unbundled from transport, local loop transmission, or other services." The FCC identified switching as an unbundled network element ("UNE") in its *Local Competition Order*. In the

³ BANY Order, \P 44.

⁴ *Id.*, ¶ 49.

⁵ *Id.*, ¶ 48.

⁶ *Id.*, ¶ 47.

⁷Implementation of Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996) ("Local Competition Order"), ¶¶ 410-427.

UNE Remand Order, the FCC retained the definition of the switching network element adopted by the FCC in its *Local Competition Order*. However, the FCC made an exception to the requirement to provide unbundled local switching: "where incumbent LECs have provided nondiscriminatory, cost-based access to combinations of loop and transport unbundled network elements, known as the enhanced extended link (EEL), requesting carriers are not impaired without access to unbundled switching for end users with four or more lines within density zone 1 in the top 50 metropolitan statistical areas (MSAs)." ¹⁰

The local circuit switch UNE generally includes the basic functions of connecting lines and trunks -- the line side facilities and trunk side facilities -- and all features, functions and capabilities of the switch.¹¹

The line-side switch facilities include the connection between a loop termination at, for example, a main distribution frame ("MDF"), and a switch line card. Trunk-side facilities include the connection between trunk termination at a trunk-side cross-connect panel and a trunk card. The "features, functions, and capabilities" of the local switch include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines and trunks to trunks.¹²

The local switching element includes all vertical features that the switch is capable of providing, including customized routing functions, CLASS features, Centrex and any technically feasible customized routing functions. Custom calling features, such as call waiting, three-way calling, and call forwarding, are switch-based calling functions. CLASS features, such as caller ID, are number translation services that are based on the availability of interoffice signaling.¹³

⁸ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order, FCC 99-238 (rel. Nov. 5, 1999) ("UNE Remand Order").

⁹ UNE Remand Order, Appendix C.

¹⁰ UNE Remand Order, ¶ 253. See also id., ¶ 278. The definition of density zone 1 shall be defined as of January 1, 1999. Id., ¶ 285.

¹¹ 47 C.F.R. § 319(c).

¹² UNE Remand Order, ¶ 244, n. 474.

¹³ *Id.*, ¶ 244, n. 475.

The FCC in the *BellSouth Louisiana II Order* explicitly held that its rules requiring that the BOC make all features, functions and capabilities of the switch available also require the BOC "to provide all vertical features loaded in the software of the switch, whether or not [the BOC] offers it on a retail basis." Nor can the BOC limit the availability of features to the same package of vertical features it offers its retail customers. ¹⁵

The BOC must activate any vertical feature or combination of vertical features requested by a competing carrier unless the BOC can demonstrate to the state commission, through "clear and convincing evidence," that activation of that particular combination of vertical features is not technically feasible." Furthermore, the BOC must have a definite "predetermined process" for ordering features that is not "open ended." "A BOC must provide the requesting carrier with a response within a reasonable and definite amount of time."

The FCC also noted that the switching UNE also included the same basic capabilities available to the ILEC's customers, for example, "telephone number directory listing, dial tone signaling, and access to 911, operator services, and directory assistance." The switching UNE also includes customized routing. Furthermore, purchasers of the switch

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Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-1221, Memorandum Opinion and Order, FCC 98-271 (rel. Oct. 13, 1998) ("BellSouth Louisiana II Order"), ¶ 271. "We use the phrase "loaded in the software of the switch" to include any vertical feature that is included in the generic software package installed in a BOC's switch or that the BOC has special-ordered from the switch manufacturer". Id., ¶ 271 n. 698.

¹⁵ *Id.*, ¶ 219.

¹⁶ *Id.*

¹⁷ *Id.*, ¶ 220.

¹⁸ *Id*.

¹⁹ Local Competition Order, ¶ 412.

²⁰ *Id.*, ¶ 418

UNE "are entitled to the same routing table that the incumbent LEC uses to route its own traffic over its switched network."²¹

In the BellSouth Louisiana II Order, MCI claimed that BellSouth's customized routing offering was inadequate because BellSouth would not "translate its customer's local operator services and directory assistance calls to Feature Group D signaling."²² The FCC stated that its rules require ILECs "to make network modifications to the extent necessary to accommodate interconnection or access to network elements."23 Therefore, "[i]f a competing carrier requests Feature Group D signaling and it is technically feasible for the incumbent LEC to offer it, the incumbent LEC's failure to provide it would constitute a violation of section 251(c)(3) of the Act."²⁴

In the BellSouth Louisiana II Order, the FCC confirmed that the BOC must provide unbundled local switching "in a manner that permits a competing carrier to offer, and bill for, exchange access and the termination of local traffic."25 Because the measuring of usage requires access to the BOC's Operations Support System ("OSS"), "a BOC must demonstrate that it is providing equivalent access to billing information. Thus, the ability of a BOC to provide billing information necessary for a competitive LEC to bill for exchange access and termination of local traffic is an aspect of unbundled local switching."26

To enable the CLEC to assess access charges, the ILEC must provide either: "(1) the actual usage information necessary to determine appropriate access charges; or (2) a

²¹ Application of Ameritech Michigan Pursuant To Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order (rel. Aug. 19, 1997) ("Ameritech Michigan Order"), ¶ 328.

22 BellSouth Louisiana II Order, ¶ 226.

²³ *Id*.

²⁴ *Id*.

 $^{^{25}}$ *Id.*, ¶ 208.

 $^{^{26}}$ *Id.*, ¶ 208.

negotiated or state approved surrogate for this information."²⁷ Similarly, for local terminating traffic, the BOC must provide a purchaser of the switching UNE either: "(1) actual terminating usage data indicating how many calls/minutes its customers received and identifying the carriers that originated those calls; or (2) a reasonable surrogate for this information," either agreed to by the parties or approved by the state commission.²⁸

The BOC may not require competing carriers to purchase a dedicated trunk from an interexchange carrier's ("IXCs") point of presence to a dedicated trunk port on the switch.²⁹ "[A] BOC must also make available trunk ports on a shared basis, and routing tables resident in the BOC's switch, as necessary to provide access to shared transport functionality."³⁰

2. Tandem Switching

In its *Local Competition Order*, the FCC held that it is technically feasible for the ILEC to unbundled tandem switches from transport.³¹ Therefore, CLECs are entitled to provide their own transport facilities and connect them to the ILECs tandem switches.³²

We define the tandem switch element as including the facilities connecting the trunk distribution frames to the switch, and all the functions of the switch itself, including those facilities that establish a temporary transmission path between two other switches. The definition of the tandem switching element also includes the functions that are centralized in tandems rather than in separate end office switches such as call recording, the routing of calls to operator services, and signaling conversion functions.³³

 $^{^{27}}$ Id., ¶ 230. "Such [actual usage] information might include the identity of the interexchange provider so the local service providers know who to bill, the time the call was placed so that the rate can be determined, and the length of the call so that amount of the charges can be calculated." Id., ¶ 230, n. 737. 28 Id., ¶ 233.

²⁹ BellSouth Louisiana II Order, ¶ 209.

 $^{^{30}}$ $_{Id}$

 $^{^{31}}$ Local Competition Order, § 425.

 $^{^{32}}$ Id

³³ Local Competition Order, ¶ 426.

The FCC retained its definition of tandem switching in its UNE Remand Order.34

3. Packet Switching

In its *UNE Remand Order*, the FCC identified packet switching as a UNE.³⁵ The issues regarding packet switching are being addressed in the emerging services workshops.

B. Transport (Interoffice Facilities)

Section 271(c)(1)(B)(v) states that the BOC must provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services." In its *UNE Remand Order*, the FCC expanded the scope of interoffice facilities to include dark fiber³⁶ and reaffirmed and classified the ILEC's obligation to provide dedicated interoffice facilities at all technically feasible capacities.³⁷

1. Dedicated Transport

The FCC reaffirmed that the definition of dedicated transport "includes all technically feasible capacity-related services such as DS1-DS3 and OC3-OC96 dedicated transport services." It also stated that it was modifying its definitions "to clarify that incumbent LECs must unbundle DS1 through OC192 dedicated transport offerings and such higher capacities as evolve over time." The ILECs also have to provide unbundled access to ring transport architectures. 40

³⁴ 47 C.F.R. § 51.319.

 $^{^{35}}$ UNE Remand Order, $\P\P$ 300-317.

³⁶ UNE Remand Order, ¶¶ 325-330. Dark fiber is being addressed in the emerging services workshop, and it will not be addressed in these comments. However, when discussing interoffice facilities, one should not forget that the obligation includes dark fiber.

³⁷ Id., ¶ 323; Local Competition Order, ¶ 440.

³⁸ UNE Remand Order, ¶ 323.

 $^{^{39}}$ *Id.*, ¶ 324.

⁴⁰ *Id*.

The FCC also rejected arguments that dedicated transport need not be identified as a network element because the functionality is available through the ILECs special access tariffs, noting that the ILECs "could effectively avoid all of the 1996 Act's unbundling and pricing requirements by offering tariffed services that, according to the incumbents, would qualify as alternatives to unbundled network elements."

The FCC, however, did not require ILECs "to construct new [dedicated] transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use.

2. Shared Transport

Shared transport are facilities "shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC network." The ILEC must also provide the "use of the features, functions, and capabilities of interoffice transmission facilities shared by more than one customer or carrier." A carrier "that uses its own self-provisioned switch, rather than unbundled local switches obtained from an incumbent LEC, to provide local exchange and exchange access service would use dedicated transport facilities to carry traffic between its network and the incumbent LEC's network." The FCC noted that the definition does not require the ILEC to provide shared transport between ILEC switches and serving wire centers, 45 and from an end office to an end user. 46

⁴¹ *Id.*, ¶ 354. *See* also *id.*, ¶ 341, n. 673.

⁴² 47 C.F.R. § 51.319(d)(1)(C).

⁴³ *Id.*, § 51.319 (d)(2)(A). *See* also *id.*, § 51.319(d)(2)(B).

⁴⁴ UNE Remand Order, ¶ 369, n. 731.

⁴⁵ *Id.*, ¶ 370.

⁴⁶ *Id.*, ¶ 370, n. 732.

C. Network Interface Device ("NID")

Section 271(c)(1)(B)(ii) states that a BOC must provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1). In its recent *UNE Remand Order*, the FCC on remand identified the list of network elements that Qwest must provide pursuant to section 251(c)(3).⁴⁷

The FCC redefined the NID to "include all features, functions, and capabilities of the facilities used to connect the loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism." Specifically, the FCC defined the NID to include "any means of interconnection of end-user customer premises wiring to the incumbent LEC's distribution plant, such as a cross connect devices used for that purpose." The FCC also requires that "an incumbent LEC shall permit a requesting telecommunications carrier to connect its own loop facilities to on-premises wiring through the incumbent LEC's network interface device, or at any other technically feasible point." So

In addition, the FCC's definition encompasses "smart NIDs" which are devices used on PBX trunks and DS1 loops that give some maintenance monitoring for the loop. Qwest must also make available the full features and functions of the NID, such as termination devices for ISDN loops.

⁴⁷ Many of the network elements are being addressed in other workshops addressing specific checklist items.

⁴⁸ UNE Remand Order, ¶ 233.

⁴⁹ 47 C.F.R. § 51.319(b).

⁵⁰ *Id*.

D. UNE Combinations

1. Legal Background

The Act states that "[a]n incumbent local exchange carrier ["ILEC"] shall provide unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." 47 U.S.C. § 251(c)(3). The FCC promulgated regulations pursuant to section 251(d) that implemented section 251(c)(3), including the provision regarding combinations. 47 C.F.R. § 51.315. Rule 51.315 contains six obligations: subsection (a) restates the requirements contained in the Act; subsection (b) states that the ILEC can not separate combined UNEs, unless requested to do so by the purchaser of the UNEs; subsection (c) states that the ILEC shall perform the functions necessary to combine the UNEs; subsection (d) states that the ILEC shall combine the ILEC's UNEs with the requesting carrier's network elements; subsection (e) states that if an ILEC denies a request to combine UNEs based on technical feasibility, the ILEC has the burden to prove that the combination is not technically feasible; and subsection (f) states that if the ILEC denies a request to combine the ILEC's UNEs because the ILEC alleges the combination would impair the ability of other carriers to access UNEs or interconnect with the ILEC, the ILEC has the burden to prove such allegations to the state commission.

A number of ILECs appealed the FCC's rules to the Eighth Circuit Court of Appeals.

The Eighth Circuit Court of Appeals vacated Rule 315(b) - (f). On appeal, the United States Supreme Court upheld the jurisdiction of the FCC to implement a number of the rules the Eighth Circuit vacated based on the lack of jurisdiction. The Supreme Court also

⁵¹ *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1998).

reinstated Rule 315(b), although the opinion was silent regarding Rule 315(c) - (f).⁵² On remand, the FCC argued that the Supreme Court's rationale for reinstating Rule 315(b) was equally applicable to Rule 315(c) - (f) and the Supreme Court's rationale undermined the Eighth Circuit's earlier decision to vacate these subsections; accordingly, the FCC argued that the Eighth Circuit should reinstate Rule (c) - (f). The Eighth Circuit declined to reinstate Rule 315 (c) - (f).⁵³

However, the Ninth Circuit Court of Appeals had the opportunity to review the validity of Rule 315(c) - (f) after the Supreme Court's decision and prior to the Eighth Circuit's decision on remand. The Ninth Circuit, based on the Supreme Court's rationale for reinstating Rule 315(b), held that a commission's decision to include the requirements of Rule 315(c) - (f) in an interconnection agreement did not violate section 251(c)(3). Therefore, for the states in the Ninth Circuit, Rule 315(b) - (f) are in effect. Since Arizona is in the Ninth Circuit, Qwest must comply with Rule 315(a) - (f). Qwest may not separate UNEs and must combine UNEs for the CLECs.

2. Rule 315 Combination of Unbundled Network Elements

On August 8, 1996, the FCC released its *Local Competition Order*, which adopted Rule 315. Rule 315 states in its entirety:

- (a) An incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carriers to combine such network elements in order to provide a telecommunications service.
- (b) Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.

⁵² AT&T Corp. v. Iowa Utils. Bd., et al, 119 S.Ct. 721, 737 (1999).

⁵³ *Iowa Utils. Bd. v. FCC*, 219 F.3d. 744, 758-759 (8th Cir. 2000).

⁵⁴ US WEST v. MFS, 193 F.3d. 744, 758-759 (9th Cir. 1999).

- Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbents LEC's network, provided that such combination is:
 - (1) technically feasible; and
- (2) would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.
- (d) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements with elements possessed by the requesting telecommunications carrier in any technically feasible manner.
- An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(1) or paragraph (d) of this section must prove to the state commission that the requested combination is not technically feasible.
- (f) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(2) of this section must prove to the state commission that the requested combination would impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

3. **Combinations of Unbundled Loops and Transport Network Elements**

a. Enhanced Extended Link ("EEL")

The EEL is "comprised of unbundled loops, multiplexing/concentrating equipment, and dedicated transport..."55 "The EEL allows new entrants to serve customers without having to collocate in every central office in the incumbent's territory."⁵⁶ "The EEL therefore allows requesting carriers to aggregate loops at fewer collocation locations and increase their efficiencies by transporting aggregated loops over efficient-high capacity facilities to their central switching locations."57

⁵⁵ UNE Remand Order, ¶ 477.
56 Id., ¶ 15.

⁵⁷ *Id.*, ¶ 288.

Although the FCC declined to define the EEL as a separate network element, the ILECs must provide the EEL, at least where the EEL is currently provisioned and combined in the ILEC network. The FCC "note[d] that incumbent LECs routinely provide the functional equivalent of the EEL through their special access tariffs."58 The ILECs may not separate these existing combinations and must make these pre-existing combinations available at UNE prices. 59 Furthermore, in Arizona, based on the Ninth Circuit's decision. Owest must also combine the necessary network elements to provide the EEL, even if it is not currently combined in Owest's network. Presently, the obligation of Owest to provide EELs is not limited to the top 50 MSAs.

b. Use of UNEs to Provide Access Services

The FCC in its UNE Remand Order discussed the use of UNEs to provide access services. The FCC noted that section 251(c)(3) permits CLECs to use UNEs to provide telecommunications services, special access services are telecommunications services, and 47 C.F.R. § 51.309(a) prohibits the ILEC from imposing any limitations on the use of UNEs. 60 The FCC concluded that "a requesting carrier is entitled to obtain existing combinations of loop and transport between the end user and the incumbent LEC's serving wire centers on an unrestricted basis at unbundled network element prices."61 The ILEC may not separate combined special access services. Furthermore, "[i]n such situations, it would be impermissible for an incumbent LEC to require that a requesting carrier provide a certain amount of local service over such facilities."62 The FCC also held that an IXC may purchase

⁵⁸ *Id.*, ¶ 481. ⁵⁹ *Id.*, ¶ 480, 47 C.F.R. § 51.315(b).

 $^{^{60}}$ UNE Remand Order, \P 484.

⁶¹ *Id.*, ¶ 486.

⁶² Id.

unbundled dedicated transport ("UDIT") from its point of presence ("POP") to an ILEC serving wire center in order to provide local exchange service, and may also provide exchange access over the same facilities.

In its Supplemental Order, the FCC held that IXCs could not convert special access services to combinations of transport and loops, whether or not the IXCs self-provide entrance facilities or obtain them from a third party, unless the IXC was providing "a significant amount of local exchange service, in addition to exchange access service, to a particular customer."63

On June 2, 2000, the FCC issued its Supplemental Order Clarification.⁶⁴ The FCC extended the restriction imposed in its Supplemental Order and defined what constitutes a "significant amount of local exchange service." It allowed the requesting carrier to selfcertify that it is providing a significant amount of local exchange service and gave the ILECs the right to conduct independent third-party-audits to verify the carrier's compliance. 65

The FCC has held that a letter sent to the ILEC is "a practical method of certification."66 Once a carrier self-certifies, the conversion "should be simple and accomplished without delay."67 "[T]he conversion should not require the special access circuit to be disconnected and re-connected..."68 The conversion should be processed "immediately" upon receipt of a conversion request. 69

⁶³ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Supplemental Order, FCC 99-370 (rel. Nov. 24, 1999) ("Supplemental Order"), ¶¶ 3, 4-5.

⁶⁴ Implementation of the Local Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Supplemental Order Clarification, FCC 00-183 (rel. June 2, 2000) ("Supplemental Order Clarification").

⁶⁵ Id., ¶ 1. See id., ¶¶ 21-28, specifically, ¶ 22 ("significant amount of local exchange service"); ¶¶ 29-31 ("self-certification and conversion process"); and ¶¶ 29-32 ("audit procedures").

66 Supplemental Order Clarification, ¶ 29.

⁶⁷ *Id.*, ¶ 30.

⁶⁸ Id.

⁶⁹ *Id*.

III. COMMENTS

A. Unbundled Network Elements

In Section 9 of the SGAT, Qwest attempts to satisfy its requirement to provide UNEs pursuant to section 251(c) of the Act and checklist item 2 of the competitive checklist of section 271(c)(2)(B) at prices that meet the requirements of section 252(d). As described below, Qwest fails to demonstrate its compliance with the competitive checklist and section 251(c) and 252(d) of the Act.

Qwest has had a checkered history of providing access to UNEs. For almost four years Qwest maintained that the only means of interconnection and access to UNEs available to the CLECs was through a Single Point Of Termination ("SPOT") frame.⁷¹ This requirement was unnecessary, costly, and introduced multiple additional points of failure.

AT&T fought against the SPOT frame in many of the states served by Qwest. Not one of the states in which AT&T contested the use of the SPOT frame required its use.

Even after commissions entered orders rejecting the SPOT, Qwest continued to impermissibly require its use. After nearly four years, AT&T was finally able to work with Qwest representatives earlier this year to assure that Qwest operations manuals were modified to allow direct connection to the same frames that Qwest uses, thereby eliminating the requirement for SPOT frames.

AT&T agrees with Qwest that an intermediate frame should be an option that the CLEC can choose. It is not true, as Ms. Stewart suggests in her testimony, that AT&T was

⁷⁰ 47 U.S.C. §§ 251(c), 252(d), 271(c)(2)(B).

At some point after Qwest's attempted implementation of the SPOT frame, the frames were renamed Inter-Connection Distribution Frames ("ICDF"). Regardless of the term used, there is no material difference between SPOT frames and ICDF. AT&T will use these terms interchangeably in its comments and at the workshops.

ever a proponent of any kind of intermediate frame as a *necessary* means of access to UNEs. It is unbelievable and ironic, given AT&T's vehement opposition to the SPOT frame, that Ms. Stewart continues to erroneously take two statements made by AT&T witnesses out of context. The witnesses Ms. Stewart identifies stated that an intermediate frame should be an optional means of access; the witness never maintained that the SPOT frame should be required. There was certainly never any "confusion on AT&T's part," as Ms. Stewart states, as to whether the ICDF was an option or a requirement.

The SGAT in Arizona was modified in late 1999 to suggest that direct connection was possible but, in fact, Qwest operations manuals used by Qwest field personnel were not modified to allow direct connection until March and April of 2000. The Arizona SGAT Third Revision dated July 21, 2000, still does not have the new Qwest language on direct connection. Section 8.3.1.11.2 of the SGAT submitted by Qwest in the Colorado workshop on collocation in early August has the new Qwest language on direct connection. This language was reviewed in the Arizona workshop during the week of August 15 and should be included in the next revision of the Arizona SGAT.

1. Section 9.1 Generally

Section 9.1 of the SGAT purports to set forth the general terms that govern Qwest's access to UNEs. In this section, Qwest has attempted to set forth its interpretation of the appropriate requirements imposed by the Act and the FCC. Unfortunately, in Section 9.1.1 Qwest sets forth nearly 30 lines of qualifications and contingencies to its obligations to provide access to UNEs. Qwest's attempt in this section to qualify its obligations under the Act and applicable rules is highly objectionable.

AT&T understands that during the workshops Qwest has ended some of its numerous challenges to commission and FCC decisions and that its policies have been modified. The workshops provide an opportunity to explore Qwest's continued objections to its legal obligations generally, and the workshop on checklist item 2 provides an opportunity to identify Qwest's continuing objections to its UNE obligations. In order for CLECs to understand exactly which obligations Qwest continues to challenge and to anticipate which obligations may be modified as a consequence of Qwest's challenges, Qwest should provide for the record in this matter a summary of Qwest's continued objections to its UNE obligations and a description of which SGAT sections Qwest anticipates modifying in the event its legal challenges succeed.

2. Section 9.1.1

The Commission and all CLECs should understand that Section 9.1.1 sets forth a mechanism by which the SGAT will be modified as a consequence of changes in what Qwest terms as "Existing Rules." First, section 9.1.1 provides that the SGAT will be "corrected" to reflect the outcome of generic proceedings by the Commission. Second, the SGAT will be amended to reflect changes in "Existing Rules" that Qwest expects to be overturned.

Presumably, the parties to the SGAT will confer to agree on a suitable "correction" or amendment. However, CLECs have not had any luck in reaching speedy agreement with Qwest, even where its legal obligations are clear. Section 9.1.1 anticipates these disputes and provides for disputes to be resolved through the dispute resolution provisions of the Agreement.⁷²

⁷² AT&T believes that the mechanisms afforded by Qwest to manage changes that would effect the parties' obligations under the SGAT, including changes in law, are inadequate. These "change management" mechanisms include the dispute resolutions provisions of the SGAT (Section 5.18). AT&T believes that the

Everything included in Section 9.1.1 has been addressed by other sections of the SGAT. For example, Section 2.2 of the SGAT is nearly identical to Section 9.1.1. AT&T recommends that Section 9.1.1 be deleted because it is redundant and outdated. Further, AT&T suggests that Qwest revise Section 2.2 to reflect what AT&T believes is Qwest's more recent positions regarding its legal requirements. In addition, AT&T anticipates a need to examine the requirements of Section 2.2 and develop a better mechanism to manage changes to Existing Rules in a future workshop. Finally, AT&T restates it request that Qwest provide a detailed inventory of its present challenges to "Existing Rules" and identify the sections of the SGAT that may change as a consequence of Qwest's possible success.⁷³

3. Section 9.1.2

Section 9.1.2 of the SGAT appears to be an attempt by Qwest to track the statutory requirements imposed on Qwest to provide access to UNEs.⁷⁴ Qwest's provisions imperfectly capture the requirements of the Act. Further, Qwest imperfectly captures the appropriate standards to be followed in providing access to UNEs.⁷⁵

AT&T proposes that Section 9.1.2 be modified as follows:

9.1.2 Qwest shall provide non-discriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonably and nondiscriminatory. Qwest shall provide the same quality of UNEs and access to UNEs as it provides all requesting carriers, itself, its end users, its affiliates and any other third person, and, where technically feasible, the access and unbundled network element provided by Qwest must be provided in substantially the same time and manner to that which the incumbent provides itself, its end users, its affiliates and any other third person. Notwithstanding the foregoing, Qwest

general change management processes incorporated in the SGAT and alternatives to such processes need to be considered.

considered.

73 This language is very similar to language advocated by Qwest for inclusion in Sections 9.23.1.2.1 and 9.23.1.2.3. As discussed below, AT&T advocates the deletion of this language as well for the same reasons.

74 See 47 U.S.C. § 251(c)(3).

⁷⁵ See UNE Remand Order, ¶¶ 490 – 491.

shall provide access and UNEs at the service performance levels set forth in Section 20. Notwithstanding specific language in other sections of this SGAT, all provisions of this SGAT regarding unbundled network elements are subject to this requirement. In addition, U S WEST shall comply with all state wholesale and retail service quality requirements.

9.1.2.1 In the event Qwest fails to meet the requirements of Section 9.1.2, Qwest shall release, indemnify, defend and hold harmless CLEC and each of its officers, directors, employees and agents (each an "Indemnitee) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but no limited to, costs and attorneys' fees.

Qwest shall indemnify and hold harmless Indemnitees from and against any and all claims, losses, damages or other liability that arises from Qwest's failure to comply with state retail or wholesale service quality standards in the provision of unbundled network elements.

4. Section 9.1.3

In Section 9.1.3 Qwest sets forth certain use restrictions on CLEC's access to UNEs. The present status of a carrier's permitted use of UNEs, including use of UNEs to provide access services is set forth in paragraphs 483 through 489 of the *UNE Remand Order*. It is unclear whether Qwest's language allows for the permitted uses identified by the FCC. Further, Qwest includes, in addition to access to UNEs, a specific use restriction on "ancillary services," that Qwest has decided to describe in Section 10 of the SGAT. Qwest's reference here is unclear, and Qwest should identify what ancillary services CLECs are prohibited from using to provide special or switched access services. AT&T has no specific suggestions for modifications to this language at this time; however, AT&T believes Qwest should formulate a more tailored provision consistent with the *UNE Remand Order*.

5. Section 9.1.4

Qwest describes certain requirements for connecting UNEs with an "Interconnection Tie Pair ("ITP"). Qwest should not charge CLECs any kind of recurring charge for the ITP. In addition, Qwest should add an additional kind of demarcation point as subsection 9.1.4(d) (and make a conforming change by renumbering existing subsection (d):

d) if CLEC elects to use a direct connection from their collocation space to the distribution frame serving a particular element.

6. Section 9.1.6

Section 9.1.6 requires CLECs to be solely responsible for end-to-end transmission and circuit functionality for all UNEs (but not, apparently, for UNE combinations). This provision must not give rise to an implication that Qwest will never be responsible for, at a minimum, assisting in or accommodating certain testing of UNEs in order to confirm their functionality, or for providing testing of the UNE when necessary for the maintenance and repair of the element. Further, Qwest must assure CLECs that the access to UNEs afforded to CLECs in the SGAT includes all of the access necessary for determining end-to-end transmission and circuit functionality. The network element may be unbundled, but it is still a component associated with Qwest's network. Qwest should insert in this section an affirmative obligation to assist CLECs upon a reasonable request to confirm functionality or other operating parameters of the UNE. In addition Qwest should insert in this section a representation that a CLEC's access will permit all required testing for determining end-to-end transmission and circuit functionality. Finally, Qwest must modify this provision to make clear that Qwest is responsible for testing individual elements at the request of the CLEC when Qwest's maintenance and repair activities require it.

7. Section 9.1.7

In Section 9.1.7, the SGAT makes reference to Exhibit C, which contains intervals for installation of unbundled loops, but states that installation intervals for other UNEs are "provided for herein or in the Interconnect and Resale Resource Guide." Initially, Qwest should identify, UNE by UNE, what intervals are specified in the IRRG. Once identified, Qwest should incorporate into the SGAT such intervals, as long as they are reasonable and provide access to UNEs as required by the Act and the FCC and any performance assurance plan adopted by the Commission. As AT&T and other CLECs have frequently noted, Qwest's numerous references to standards, terms and conditions in the IRRG do not create the concrete and legally binding obligations Qwest must establish before meeting the competitive checklist requirements. In short, because the terms of the IRRG are not definite and subject to modification at Qwest's discretion without consent of CLECs, they are not concrete terms on which Qwest can base its compliance with the Act. Qwest should modify this provision to satisfy AT&T's concerns and include all external intervals as part of the SGAT.

8. Section 9.1.9

In Section 9.1.9, Qwest reserves the right to make changes to its network. Although AT&T does not object in principal to this reservation, and Qwest appears to warrant that such changes will result in nothing more than "minor changes to transmission parameters," AT&T has concerns that Qwest's modification may create material changes in the quality and character of Qwest's UNEs and the access to UNEs. Qwest attempts to ameliorate this concern by stating that it will comply with FCC rules requiring advance notice in changes that affect network interoperability.

AT&T's concern is that such modifications may not be of a nature to affect "network interoperability" but could change the nature of a UNE or require or make available a different method or point of access. AT&T requests that Qwest provide examples of the kinds of modifications that would affect "network interoperability" that would require advance notice pursuant to FCC rules. After review of Qwest's interpretation of the requirements of this section, AT&T may have recommendations for additional changes.

9. Section 9.1.10

Section 9.1.10 imposes a channel regeneration charge on CLECs where "the distance" between Qwest's network and the CLEC's collocation space or ICDF frame "is of sufficient length to require regeneration." A similar charge is imposed in the context of dedicated transport described below. Such charges are unreasonable and discriminatory. Whether necessitated as part of a CLEC's access to a UNE or whether incorporated as part of the UNE itself (as in the case of dedicated transport), Qwest should supply fully functional UNEs or reasonable access. This regeneration charge is another example of one of the myriad unreasonable and unfair additional costs Qwest attempts to impose on CLECs as a further impediment to competition. This provision should be deleted.

10. Section 9.1.12

Section 9.1.12 describes certain "Miscellaneous Charges" to be assessed by Qwest in the provision of UNEs and access to UNEs. AT&T notes that CLECs have been subjected to numerous additional and "miscellaneous" charges in attempting to secure access. The SGAT should specifically identify the circumstances under which these charges will apply. Furthermore, the law requires that such rates be just, reasonable and nondiscriminatory. AT&T believes that any parallel proceedings accompanying these workshops must consider

whether these additional and miscellaneous charges are necessary, just, reasonable and nondiscriminatory.

11. Section 9.19

Section 9.19 of the SGAT identifies Qwest's policy on construction charges that would apply in certain UNE contexts. This section purports to apply to "unbundled loops" and also "ancillary and finished services." The terms of this paragraph and its inclusion in the UNEs section creates some ambiguity as to its application. For example, this paragraph could be construed to assess construction charges for interconnection trunks because Qwest has designated interconnection trunks or "LIS," as a finished service. Furthermore, this section appears to be inconsistent in some respects with Section 19.0 of the SGAT, which is a similar provision. AT&T suggests that the language regarding construction charges be eliminated from this section. AT&T further suggests that Qwest describe with precision the ancillary and finished services that apply under Section 19.0. The list of finished and ancillary services should not include services (or "products") that Qwest inappropriately categorizes as "finished" or "ancillary." AT&T requests that Qwest revise Section 19.0 to accommodate these concerns.

B. Unbundled Transport

Section 271(c)(2)(B)(v) of the competitive checklist requires Qwest to provide "[l]ocal transport from the trunk side of the wireline local exhange carrier switch unbundled

from switching or other services."⁷⁶ The FCC has determined that to satisfy this checklist items, Qwest must demonstrate that it is providing both dedicated and shared transport.⁷⁷

1. Unbundled Dedicated Transport

The FCC has defined dedicated transport as Qwest transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by Qwest or CLECs or between switches owned by Qwest or CLECs. As recently as the SBC Texas Order the FCC restated the specific obligations of the BOCs, such as Qwest:

A BOC has the following obligations with respect to dedicated transport: (a) provide unbundled access to dedicated transmission facilities between BOC central offices or between such offices and serving wire centers (SWCs); between SWCs and interexchange carriers points of presence (POPs); between tandem switches and SWCs, end offices or tandems of the BOC, and the wire centers of BOCs and requesting carriers; (b) provide all technically feasible transmission capabilities such as DS1, DS3 and Optical Carrier levels (e.g. OC-3/12/48/96) that the competing carrier could use to provide telecommunications; (c) not limit the facilities to which dedicated interoffice transport facilities are connected, provided such interconnections are technically feasible, or restrict the use of unbundled transport facilities; and (d) to the extent technically feasible, provide requesting carriers with access to digital cross-connect system functionality in the same manner that the BOC offers such capabilities to interexchange carriers that purchase transport services. ⁷⁹

Qwest fails to provide unbundled dedicated transport as required.

⁷⁶ 47 U.S.C. § 271(c)(2)(B)(v).

⁷⁷ BellSouth Louisiana II Order, ¶ 201.

Id. The FCC has modified the definition of dedicated transport to include dark fiber. Qwest has identified dark fiber as a separate UNE, and AT&T provided comments regarding dark fiber in another workshop.

Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance, Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238 (rel. June 30, 2000) ("SBC Texas Order"), ¶ 331, n. 920, citing BellSouth Louisiana II Order, 13 FCC Rcd 20719. See also Local Competition Order, ¶ 440. The Local Competition Order describes dedicated transport as providing:

[&]quot;incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers."

a. Section 9.6.1

In Section 9.6.1 of the SGAT, Qwest attempts to define dedicated transport. Qwest's definition fails to track the requirements outlined by the FCC. Specifically, the definition fails to identify all the permissible routes (*e.g.* between central offices, tandems of the BOC) and fails to provide for all feasible transmission capabilities (*e.g.* OC48 and OC192). In addition, Qwest creates a distinction between forms of transport that creates discriminatory and unreasonable burdens on CLECs.

Specifically, Section 9.6.1.1 does not provide for dedicated transport between the full panoply of facilities required by the FCC, such as between CLEC wire centers or switches. In addition to imperfectly capturing the explicit requirements of law, Section 9.6.1.1 creates an unwarranted and artificial distinction between dedicated transport provided between two Qwest wire centers (UDIT) and dedicated transport provided between a Qwest wire center and a CLEC wire center or IXC POP. The FCC makes no such distinction, and there is no legal authority permitting Qwest to make such a distinction. Under Qwest's dedicated transport regime, instead of ordering one UNE to get from a CLEC wire center to a Qwest wire center, the CLEC will usually need to order two UNEs, UDIT and Extended Unbundled Dedicated Interoffice Transport ("EUDIT"). The only exception to the requirement that CLECs obtain two UNEs to get from a CLEC wire center to a Qwest wire center is when the CLEC orders dedicated transport between the CLEC wire center and the nearest Qwest wire center, called by Qwest the "Serving Wire Center." Presumably, all CLECs must order each UDIT and EUDIT element separately, even though they may be for transport of the same traffic. Each CLEC must pay twice for this transport. This requirement is unreasonable and discriminatory.

Qwest must modify Section 9.6.1.1 to closely track the requirements of law and eliminate the unreasonable and discriminatory bifurcation of dedicated transport facilities.

Qwest should make conforming changes throughout Section 9.6.1 to reflect these changes in the definition of dedicated transport.

In Section 9.6.1.2, Qwest describes an "Unbundled Multiplexer" that is "offered as a stand-alone element associated with UDIT." Qwest's SGAT is unclear whether this multiplexer is required as a part of a CLEC's access to dedicated transport as a UNE. ⁸⁰ If so, the requirement is directly contrary to applicable law, which prohibits Qwest from limiting what facilities Qwest dedicated interoffice transport may be connected to. ⁸¹ Multiplexing in this context should be offered as an option available to CLECs. Qwest should clarify, however, whether it is being offered as a UNE under the SGAT, as the plain language of Section 9.6.1.2 suggests, or, if it is not being offered as a UNE, explain why it is not a UNE.

When offered as an option, Qwest should add SONET add/drop multiplexing to Section 9.6.1.2. It is a common need to go from SONET transport (OC3 or OC12, for example) to DS3. The CLEC needs to have the option to order this type of multiplexing.

Qwest should modify and/or reorganize this provision to provide for greater clarity and allow SONET add/drop multiplexing as an option.

b. Section 9.6.2

Sections 9.6.2.1 and 9.6.2.2 require the CLEC to provide for its own regeneration for transmission facilities. Qwest should deliver dedicated transport to the CLEC with the appropriate template signal, whether it be DS0, DS1, DS3 or OCn. To imply that the signal

⁸⁰ Section 9.6.2.2 creates the same ambiguity.

⁸¹ SBC Texas Order, ¶ 331, n. 920.

that Qwest is delivering would not meet template specifications is to imply that Qwest is not delivering the UNE in working condition. Qwest must amend these sections to eliminate the requirement that a CLEC order or provide regeneration and add an affirmative statement to the SGAT that requires Qwest to deliver transport with the proper template signal.

In addition, Paragraph 9.6.2.1 states that the CLEC is responsible for cross connections between UDIT and EUDIT. As was stated earlier, AT&T does not agree that there is a distinction between UDIT and EUDIT. If there were, there certainly should not be the requirement for the CLEC to perform cross connection between them. The effect of this provision is to require the CLEC to pay for cross connection between these two fictitious elements, or worse, to have collocation in the Qwest office where UDIT becomes EUDIT. If this were the case, a CLEC would need collocation in virtually every Qwest office in order to get dedicated transport from office to office in the Qwest network. For example, if the CLEC orders dedicated transport from its switch to a far end office, the CLEC would need collocation in *both* of the Qwest offices. This is unreasonable. The dedicated transport is merely passing through the intervening office. Cross connection cannot be a requirement between UDIT and EUDIT.

Section 9.6.2.3 requires the CLEC to have collocation at both ends of UDIT, except for pre-existing combinations provided as combinations. This requirement is unreasonable and discriminatory. AT&T suggests that this paragraph be deleted. In addition, as will be discussed below, CLECs must be allowed to order combinations that include UDIT, whether or not the combination is preexisting. Combinations that include dedicated transport are very common in the Qwest network. This is not a new or little used combination of network elements.

In Section 9.6.2.5, Qwest states that dedicated transport at rates above DS1 will be provided via an optical interface at the location requested by the CLEC. The paragraph is poorly written, but AT&T assumes it means that an optical interface will be provided at the CLEC wire center or IXC POP side of the dedicated transport, not at the Qwest wire center side. However, this is not appropriate. If the CLEC orders DS3 dedicated transport, Qwest should provide a DS3 templated signal at both ends. Anything else is an incomplete UNE. This paragraph should be deleted.

Paragraph 9.6.2.6 requires the CLEC to provide space for Qwest equipment in the CLEC wire center for the terminating end of the dedicated transport. Although Qwest is careful in this section not to use the term, Qwest's use of space in a CLEC wire center is collocation of Qwest equipment. It should be noted that a similar arrangement is provided by the CLEC for interconnection trunks. Qwest does not offer here, nor in the interconnection section, to compensate the CLEC for collocation of Qwest's equipment.

c. **Section 9.6.3**

In Section 9.6.3, Qwest lists rate elements for dedicated transport. Qwest must confirm that the many rate elements for dedicated transport will all be addressed in the cost case. The cost case should address not only the prices for the elements; it also should address the appropriateness and application of each element in various configurations.

2. Unbundled Shared Transport

The FCC has defined shared transport as transmission facilities shared by more than one carrier, including a BOC, between end office switches, between end office switches and

tandem switches, and between tandem switches, in the BOC's network. 82 Specifically, the FCC has determined that Qwest has the following obligations with respect to shared transport:

(a) Provide shared transport in a way that enables the traffic of requesting carriers to be carried on the same transport facilities that BOC uses for its own traffic; (b) provide shared transport transmission facilities between end office switches, between end office and tandem switches, and between tandem switches in its network; (c) permit requesting carriers that purchase unbundled shared transport and unbundled switching to use the same routing table that is resident in the BOC's switch; and (d) permit requesting carriers to use shared (or dedicated) transport as an unbundled element to carry originating access traffic from, and terminating to, customers to whom the requesting carrier is also providing local exchange service.⁸³

Section 9.8 of the SGAT is the provision Qwest relies on to satisfy its requirement to provide access to shared transport. Although it is understandably brief, this section should be revised to more closely track the requirements of the FCC. Specifically, Section 9.8 should include an affirmation of the requirement that CLEC traffic shall use the same routing table resident in Qwest's switch and that this element may carry originating and terminating access traffic from, and to customers to whom the requesting carrier is also providing local exchange service.

C. **Unbundled Switching**

1. **Unbundled Local Switching**

Section 271(c)(2)(B)(vi) of the Act requires Qwest to provide "[l]ocal switching unbundled from transport, local loop transmission or other services."84 Local switching

⁸² SBC Texas Order, ¶ 331.

⁸³ *Id.*, n. 921.

^{84 47} U.S.C. § 271(c)(2)(B)(vi).

includes line-side and trunk-side facilities, shared trunk ports, unbundled tandem switching, all vertical features that the switch is capable of providing, any technically feasible customized routing functions, usage information for billing exchange access and usage information for billing reciprocal compensation in addition to the basic switching function.⁸⁵

Qwest suggests that Sections 9.10 and 9.11 are sufficient to demonstrate Qwest's compliance with the requirements to provide unbundled switching. The primary flaw of the SGAT language on unbundled switching is that the SGAT focuses on unbundled switching as an *element* and does not actually address *access* to the element. When unbundled switching is used as part of a UNE-P combination there is no requirement for a CLEC to have access to the switch port. However, if the CLEC is providing its own loop, access must be given to the CLEC at the switch port. Access should be provided at both the DS0 level for copper loops and at the DS1 level for PBX trunks, ISDN trunks, and Digital Loop Carrier. Standard Digital Loop Carrier interfaces should be provided to the switch, including GR303 and GR008, or any other interface used by Qwest. The SGAT must be amended to include these types of access.

a. Section 9.11

In Sections 9.11.1.8 and 9.11.1.9.2, Qwest has provided a long list of vertical features in the SGAT that are provided by the switch. Qwest has further stated that the CLEC can have access to all features loaded on the switch. However, there seems to be some issue with respect to which customer features are provided by the switch and which features are

 $^{^{85}}$ SBC Texas Order, \P 339.

provided via AIN capabilities in the Qwest signaling network.⁸⁶ Qwest must clarify which features are provided by the switch and which by AIN capabilities. A discussion must then occur regarding why certain features are provided by AIN and not by the switch. Many times there will be a choice as to whether features should be put in the switch or in the signaling network. Based on Qwest's responses to this inquiry, AT&T may have proposed additional modifications to the SGAT.

Further, in Section 9.11.1.9.2, Qwest indicates that "Additional Vertical Features in each switch are available on an individual case basis." Although AT&T understands that each switch might present a slightly different case for vertical features, Qwest is required to have a definite predetermined process and must provide a response to a request within "a reasonable and definite time." The process cannot delay the availability of the feature. ⁸⁸ Qwest must modify this provision to describe with more precision a definite process pursuant to which it will describe the vertical features of a given switch.

In Section 9.11.2.1, Qwest indicates that a CLEC may purchase vertical features that are loaded but not activated on a switch, but only after it makes a request through he BFR process. The BFR process is a lengthy and expensive process that is unreasonable, discriminatory and unnecessary and fails to meet the requirements in the *BellSouth Louisiana II Order*. Further, the BFR process contemplates that Qwest may deny a request. In this instance, where a function is loaded but not activated, Qwest cannot deny access to the

⁸⁶ "In some cases vertical features may be provided using hardware and software external to the actual switch. In those instances, the functionality of such external hardware and software is a separate network element under section 251(c)(3), and is available to competing providers." *Local Competition Order*, ¶ 413, n. 917. The FCC has held that the ILECs must provide CLECs with access to AIN. *Id.*, ¶¶ 495-498. The FCC confirmed this requirement in the *UNE Remand Order*, but limited access to proprietary software. *UNE Remand Order*, ¶¶ 402-409, 418-419.

⁸⁷ BellSouth Louisiana II Order, ¶ 220.

⁸⁸ *Id*.

feature unless it can demonstrate to the Commission with clear and convincing evidence that the activation is not technically feasible.⁸⁹ Owest must modify this provision to establish a simpler, more expeditious process for activation.

In Section 9.11.2.5, Qwest attempts to describe the limited exception to the national unbundled local switching requirement established by the FCC. 90 Qwest has limited the availability of unbundled switching in wire centers to end users with four or more access lines within density zone 1 in the top 50 Metropolitan Statistical Areas, as described by the FCC. 91 As described in the next several paragraphs, Qwest imperfectly captures the FCC's exception and fails to create a workable solution to accommodating the exception.

First, the FCC has made clear that only those density zone 1 classifications "frozen" as of January 1, 1999, are appropriate to use in applying the unbundled switching exclusion. Owest must confirm that the wire centers identified meet the FCC's criteria. Further, some wire centers serve not only density zone 1 but also other density zones. Owest must confirm whether the identified wire centers include other density zones and, if they do, Qwest should make clear in its SGAT that customers in such density zones are not covered by the exclusion, even if their lines are located in the named wire centers. Conforming changes must be made throughout Section 9.11.2.5.

Second, the FCC has made clear that the exception to the local switching unbundling requirement only applies if CLECs have nondiscriminatory, cost-based access to the EEL.⁹²

 $^{^{89}}$ Id., \P 219.

⁹⁰ See UNE Remand Order, $\P\P$ 276 – 299.

Owest has identified two wire centers that constitute density zone 1 in the only MSA in Arizona that constitutes an MSA.

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UNE Remand Order, ¶ 288.

Accordingly, the availability of this exclusion is conditioned upon Qwest providing appropriate access to EELs. As discussed below, Qwest needs to modify its EELs offering in order to comply with the FCC's requirements; and, therefore, acceptability of this exclusion must be conditioned on those modifications.

Third, if a CLEC is currently serving a customer using a loop/switch combination, and the customer adds a fourth (or more lines), then a CLEC should be able to continue to serve that customer using loop/switch combinations. Under the current language in the SGAT, a CLEC would appear to be required to migrate all of that customer's lines to either resale, by some facility-based offering if possible, or turn the customer back to Qwest (although the actual process for such migration is not specified in the SGAT). This section of the SGAT should provide language to allow a CLEC to continue serving a customer under these circumstances. This section should also contain an express provision requiring that in no event may Qwest disconnect from service any CLEC customer before arranging for continued uninterrupted service.

Fourth, there is no clarity regarding the terms "end-user," "customer," and "end user customer" which are apparently used interchangeably in Section 9.11.2.5. Also, the phrase "located within the Wire Center" is ambiguous. Does the SGAT refer to four or more lines for one customer *location* in the density zone 1 area? Does the SGAT refer to four or more lines for *all* customer locations of a *single* customer in the density zone 1 area? Does the SGAT refer to four or more lines for multiple customer locations in a *state*? In addition to the other changes advocated above to Section 9.11.2.5, Qwest must add the following language to Section 9.11.2.5.3 of the SGAT to clarify the exclusion:

9.11.2.5.3.1 If a customer has three or fewer lines when the CLEC first begins serving the customer using UNE switching, singly or in combination, the addition by

the customer of lines in excess of 3 shall not preclude the CLEC from continuing to serve the customer using UNE switching provided by Qwest.

- 9.11.2.5.3.2 The exclusion shall only apply to a single customer location within the density zone 1 area. Any additional customer locations, whether within the density zone 1 area or outside the density zone 1 area shall not be considered in determining whether more than 3 lines are in use by the customer.
- 9.11.2.5.3.3 Aggregated billing for more than one customer location shall not be used in an additive fashion. For example, a customer with one location having 3 lines and a second location having 2 lines could be served by a CLEC using unbundled switching or UNE-P in both locations.
- 9.11.2.5.3.4 Only voice lines shall be used in counting the exclusion. Data lines, alarm or security lines, or any other type of lines shall not be used in the count.
- 9.11.2.5.3.5 The high frequency portion of a loop shall not count as a second line.
- 9.11.2.5.3.6 End-users shall be considered individually in MDU buildings or any other multiple use or high-rise building or campus configuration.
- 9.11.2.5.3.7 A basic rate ISDN line counts as one line.

It is in the best interest of customers to add these limitations to the Qwest restriction on the provision of unbundled switching and combinations that use unbundled switching.

The restriction on unbundled switching should not apply in offices that have severe space or capacity limitations. If space in the Qwest office is insufficient for multiplexing, concentration or the additional equipment needed for providing transport facilities, there should be no restriction on CLEC use of unbundled switching. If Qwest has insufficient Interoffice Facilities (IOF) to provide the transport capability for EELs, there should be no restriction on CLEC use of unbundled switching. In addition, the restrictions should not apply where service is provided using Remote Switching Modules ("RSMs"). Remote offices are typically small and may not have space for the appropriate multiplexing or concentration equipment.

b. Other Unbundled Local Switching Requirements

In addition to the changes to specific provisions of the SGAT advocated above,

Qwest must address two areas that are not addressed in the SGAT. First, the SGAT does not
include provisions for unbundling the Centrex management and control features of the
switch. These features would allow the CLEC to manage its own Centrex type services. The
SGAT must include language that will allow CLECs to control, manage and maintain their
own Centrex services provided using the Qwest unbundled switch.

Second, the SGAT does not include any provisions notifying CLECs of changes to the switch, including generic software upgrades, etcetera. The SGAT must be modified to provide for prompt and complete notification as well as a process for CLECs to avail themselves of new features, functions and capabilities.

2. <u>Unbundled Tandem Switching</u>

Qwest relies on Section 9.10 to satisfy its obligations to provide tandem switching as an unbundled element. Qwest's provisions imperfectly reflect its requirements to provide tandem switching. Section 9.10.1 sets forth Qwest's definition of tandem switching. As an initial matter, AT&T notes that no FCC order or rule on this issue distinguishes between local and other kinds of tandems. Qwest cannot avoid its obligation to provide access to all tandem switches simply by changing the name of the switches and attempting to limit the tandem switch's functions.

Qwest's tandem switching "product" refers nominally to "local tandem switching."

Qwest must clarify whether this offering intends to limits a CLEC's access to all of Qwest's

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 $^{^{93}}$ Local Competition Order, \P 425.

tandem switches. AT&T suggests, as an initial matter, that all of Owest's references to "local tandem switches" be changed to "tandem switches" to more closely the track the FCC's requirements.

Similarly, Section 9.10.1 of the SGAT does not fully conform to the requirements set forth by the FCC. Accordingly, AT&T proposes that Section 9.10.1 be revised to more closely reflect the FCC's order:94

9.10.1 The local tandem switching element establishes. The tandem switch element includes the facilities connecting trunk distribution frames to a tandem switch, and all the functions of the switch itself, including those facilities that establish a temporary transmission path between two other switches. The local tandem switching element The definition of the tandem switching element also includes the functions that are centralized in local tandems switches rather than in separate end office switches such as call recording, the routing of calls to operator services, and signaling conversion functions.

In Section 9.10.2, Qwest sets forth certain additional terms and conditions for access to tandem switches. Specifically, Owest requires "tandem to tandem connections" between Owest and third party tandem providers. AT&T agrees that it is elementary that "connections" must be made, but Qwest must provide more detail regarding what specific "connections" it deems are necessary, how they will be provided and by whom.

In addition, AT&T proposes adding a section as Section 9.10.2.2 that tracks the FCC's orders:95

The requirement to provide unbundled tandem switching includes: (i) trunk-connect facilities, including but not limited to the connection between trunk termination at a cross-connect panel and a switch trunk card; (ii) the base switching function of connecting trunks to trunks; and (iii) the functions that are centralized in tandem switches (as distinguished

Local Competition Order, ¶ 426.
 SBC Texas Order, ¶ 339, n. 948.

from separate end-office switches), including but not limited to call recording, the routing of calls to operator services, and signaling conversion features.

D. Network Interface Device ("NID")

In the *UNE Remand Order*, the FCC added the NID to the list of UNEs that must be provided to CLECs on an unbundled basis pursuant to section 251(d)(2) of the Act. Revised Rule 51.319, in relevant part states:

(b) Network Interface Device. An incumbent LEC shall provide nondiscriminatory access, in accordance with § 51.311 and section 251(c)(3) of the Act, to the network interface device on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service. The network interface device network element is defined as any means of interconnection of end-user customer premises wiring to the incumbent LEC's distribution plant, such as a cross connect device used for that purpose. An incumbent LEC shall permit a requesting telecommunications carrier to connect its own loop facilities to on-premises wiring through the incumbent LEC's network interface device, or at any other technically feasible point.

In addition, in the *UNE Remand Order*, the FCC redefined the NID to "include all features, functions, and capabilities of the facilities used to connect the loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism." The FCC went on to state that:

We conclude that the NID definition, for the purposes of our unbundling analysis, should be flexible and technology-neutral. The Commission's rules permit considerable variation in the interconnection facilities between carrier and customer-controlled facilities. Furthermore, evolution in network design and technology will likely cause additional design variations among the hardware interfaces between carrier and customer premises facilities. Accordingly, we define the NID broadly to ensure that competitors will be able to obtain access to any of these facilities as an unbundled network element. Our intention is to ensure that the NID definition will apply to new technologies, as well as current technologies, and to ensure that competitors will continue to be able to access customer premises facilities

 $^{^{96}}$ UNE Remand Order, \P 233.

as an unbundled network element, as long as that access is required pursuant to section 251(d)(2) standards. ⁹⁷

Section 9.5 of the SGAT sets forth Qwest's proposals for the NID and access to the NID. Section 9.5 is insufficient for numerous reasons.

1. Section 9.5.1

First, in Section 9.5.1, Qwest sets forth the definition of the NID. The definition of the NID in Qwest's SGAT does not comply with the FCC's definition in several respects. 98 Qwest describes the NID as an "interface between Qwest's Loop facility and the end user's inside wire and is considered part of the Unbundled Loop facility." In short, Qwest's provides the NID under its SGAT *only* when a CLEC acquires an unbundled loop from Qwest. Qwest's offer is clearly far short of the FCC's requirement that a NID be available on a stand-alone basis. Qwest must remove the first sentence of the definition.

Qwest's definition is deficient in other respects as well. Section 9.5.1 does not provide access to all of the features of the NID in all cases but instead limits access to residential NIDs. 100 Qwest then restricts the NID to the inside wire terminals, unless there are spare protection modules on the existing NID. This is not compliant. Qwest's SGAT must be expanded to reflect the FCC's requirement. In addition, the FCC's definition encompasses "smart NIDs," which are devices used on PBX trunks and DS1 loops that give some maintenance monitoring for the loop. Qwest must revise its SGAT accordingly. The SGAT must also be expanded to make available the full features and functions of the NID, such as termination devices for ISDN loops.

⁹⁸ 47 C.F.R. § 51.319.

 $^{^{97}}$ Id., ¶ 234.

⁹⁹ SGAT § 9.5.1 (emphasis added).

Qwest's language should be changed to identify all types of NIDs, including those kinds of network terminating devices used in multiple dwelling unit or high-rise buildings or campuses to ensure that all network-terminating devices are included. Further, Qwest must provide additional language that assures that all forms of network terminating devices are covered. AT&T proposes that the following language be substituted for the language Qwest presently provides for Section 9.5.1:

The NID is defined as set forth in FCC Rule 51.319. Without limiting the foregoing, the NID includes any means of interconnection of customer premises wiring to the ILEC distribution plant, such as a cross connect device, and it includes all features, functions, and capabilities of the device or equipment used to make that connection.

- 9.5.1.1 Although the NID provides the connection to the customer premise wiring, it may not always be located at the demarcation point where the customer premise wiring begins. Qwest shall permit CLEC to connect its own loop facilities to on-premises wiring through the Qwest NID, or at any other technically feasible point.
- 9.5.1.2 The NID is a single-line termination device or that portion of a multiple-line termination device required to terminate a single line or circuit. The fundamental function of the NID is to terminate and provide protection to the distribution media and as a connection point to the end user's wiring or equipment.
- 9.5.1.3 The NID features at least two independent chambers or divisions that separate the service provider's network from the inside wiring. Each chamber or division contains the appropriate connection points or posts to which the service provider and the end-user customer each make their connections. The NID provides a protective ground connection, and is capable of terminating cables such as twisted pair cable.
- 9.5.1.4 The NID may also include test devices such as "smart NID" for DS1 or higher loops.

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¹⁰⁰ SGAT, § 9.5.1.

2. Section 9.5.2

Section 9.5.2.1 requires the CLEC to install its own NID when the CLEC provides its own drop (loop distribution). This is not compliant. The FCC specifically determined that it is unreasonable to require the CLEC to provide its own NID, stating that "[t]he record indicates that requiring a requesting carrier to self-provision NIDs for all customers it seeks to serve would materially raise the cost of entry, delay broad facilities-based market entry, and materially limit the scope and quality of the competitor's service offerings" and required incumbent LECs to provide unbundled access to NIDs nationwide." Qwest must remove this requirement in Section 9.5.2.1 and make its NIDs available in accordance with the FCC's requirements.

In addition, Section 9.5.2.1 only gives CLECs access to the NID if space is available on the existing NID. This means that Qwest intends to maintain its existing drop on the NID. This violates the FCC *UNE Remand Order*. Qwest is required to give CLECs access to its NID. If space is unavailable, it appears that Qwest will deny access to the NID, instead requiring CLECs to install their own NID. Refusing to provide CLECs access to the protector side of the existing NID will deny CLECs access to all of the features and functions of the NID, thus negating the intent of requiring Qwest to provide access to the NID. Clearly, the *UNE Remand Order* mandates that Qwest remove its NID connections in order to give CLECs access to the NID. Qwest must eliminate the restriction in Section 9.5.2.1 that CLECs can only access the NID if there is space available or if space can be made through Qwest accommodation.

 $^{^{101}}$ UNE Remand Order, \P 232.

Section 9.5.2.1 also provides that CLECs access the NID only through cross-connections and that CLECs must "isolate the Qwest facility in the NID by unplugging the modular unit." The Act and FCC rules require that CLECs be able to access NIDs at any technical feasible point and manner. CLECs must, at their option, be able to connect loops directly to Qwest's NID enclosures. Qwest should amend this provision of the SGAT to provide for direct access. In addition, AT&T proposes that the SGAT also be amended to specify the following kinds of access to the NID, in order to make Qwest's responsibilities clear:

- 9.5.2.1.1 Qwest shall allow CLEC to connect its loops directly to Qwest's multi-line NID enclosures that have additional space and are not used by Qwest or any other Telecommunications Carrier to provide service to the premise. CLEC agrees to pay for use of the Qwest NID in accordance with the schedules set forth in Part X (Pricing) of this Agreement.
- 9.5.2.1.2 Qwest shall allow CLEC to use all the functionality of the Qwest NID if so desired, including any protection mechanisms, test capabilities, or any other capabilities now existing or as they may exist in the future.
- 9.5.2.1.3 If a Qwest loop (drop) is being replaced by an CLEC loop (drop) CLEC may use the existing NID connection for the Qwest loop, including all of its capabilities. In such situation, the Qwest loop will be appropriately capped, tied off, or terminated to ground as desired by Qwest.
- 9.5.2.1.4 Where environmental conditions permit, either Party may remove the inside wire from the other Party's NID and connect that wire to that Party's own NID; or
- 9.5.2.1.5 Enter the subscriber access chamber or "side" of "dual chamber" NID enclosures for the purpose of extending a connecterized or spliced jumper wire from the inside wire through a suitable "punch-out" hole of such NID enclosures; or
- 9.5.2.1.6 Request Qwest to make other rearrangements to the inside wire terminations or terminal enclosure on a time and materials cost basis to be charged to the requesting Party (i.e., CLEC, its agent, the building owner or the subscriber). Such charges will be billed to the requesting Party.

Section 9.5.2.1 also describes circumstances in which Qwest will replace NIDs and ambiguously states that a CLEC will be assessed charges for this. Qwest should explain in more detail its requirements for replacing the NID and the charges therefore.

Section 9.5.2.2 states that Qwest will "retain sole ownership of the Qwest NID and its contents on Qwest's side." This provision blatantly disregards the law on access to unbundled network elements and denies CLECs access to the full functions and capabilities of the element and should be eliminated.

Section 9.5.2.2 also states that Qwest's shall not be responsible for multiple "NID change-outs." Section 9.5.3.1 describes rate elements for these replacements. Qwest should clarify these provisions relating to its "change-out" policy as discussed above in AT&T's comments on Section 9.5.2.1.

3. Section 9.5.3

Section 9.5.3.2 references rates for "single tenant NIDs," which are specified in Exhibit A. Because other kinds of NIDs must be made available to CLECs, conforming changes should be made to this section of the SGAT.

4. Section 9.5.4

Section 9.5.4 states that stand-alone NIDs are ordered using the remarks section of the LSR form. To accomplish the stand-alone NID order, the CLEC would have to specifically cancel the loop order in the remarks section as well. However, because LSRs will automatically flowthrough, this procedure will result in the remarks section not being read prior to the LSR flowthrough. Consequently, a loop order will be placed with every stand-alone NID that is ordered. This procedure should be revised.

5. Access to Subloops

In addition, with respect to access to the NID in conjunction with unbundled access to subloops the FCC has stated that "[L]ack of access to unbundled subloops at technically feasible points throughout the incumbent's loop plant will impair a competitor's ability to provide services that it seeks to offer" and that 'technically feasible points' would include a point near the customer premises, such as the point of interconnection between the drop and the distribution cable, the NID, or the MPOE." Finally, the FCC stated:

By continuing to identify the NID as an independent unbundled network element, we underscore the need for the competitive LEC to have flexibility in choosing where best to access the loop. Competitors purchasing a subloop at the NID, however, will acquire the functionality of the NID for the subloop portion they purchase. We therefore find no need to include inside wiring in the definition of the NID, or to include the NID as part of any other subloop element. ¹⁰⁴

As discussed in Workshop 2, Qwest's SGAT does not adequately reflect the full scope of Qwest's obligation to provide unbundled access to subloop elements and, as a result, the SGAT does not fully and properly reflect the FCC's requirements for access to the NID in conjunction with subloop elements. Qwest's SGAT must be revised to comply with these obligations.

E. Unbundled Customer Controlled Rearrangement Element ("UCCRE")

Qwest identifies an "Unbundled Customer Controlled Rearrangement Element" as an element in Section 9.9. UCCRE does not appear on the FCC's national list of UNEs, nor has the Commission separately identified it as an element. Without further clarification of the

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¹⁰² UNE Remand Order, ¶ 209.

 $^{^{103}}$ *Id.* ¶ 210.

¹⁰⁴ *Id.* ¶ 235.

nature and purpose of the UCCRE, AT&T is unable to offer detailed comments on it. AT&T requests that Qwest provide a more detailed description of the UCCRE and the purpose for in including it in the SGAT.

Presently, Section 9.9.1 of the SGAT describes the UCCRE as a "means by which CLEC controls the configuration of unbundled network elements (UNEs) or ancillary services on a near real time basis through a digital cross connect device." Qwest must provide CLEC access to all the features and functions of a particular element. In addition, Qwest must provide CLEC access to UNEs to allow them to combine elements to provide a communications service. AT&T is concerned that the SGAT may be construed to require CLECs to utilize the UCCRE as the sole means to access all the features or function of a UNE or to combine UNEs. This is clearly prohibited by the Act and FCC rules.

F. Combinations of Unbundled Elements

As part of the requirements of checklist item 2, Qwest must demonstrate that it is providing nondiscriminatory access to combinations of UNEs. More specifically, Qwest must demonstrate that it is providing access to requesting carriers in a manner that allows CLECs to combine UNEs and that it is providing "preexisting combinations" of UNEs to CLECs. Qwest is forbidden from separating network elements that are already combined to provide a service. In the states within the jurisdiction of the Ninth Circuit Court of Appeals, Qwest must also combine network elements on behalf of the requesting carrier.

 $^{^{105}}$ SBC Texas Order, ¶¶ 214 and 215.

 $^{^{106}}$ SBC Texas Order, \P 216.

¹⁰⁷ 47 C.F.R. § 51.315(b). This rule was upheld by the U.S. Supreme Court. *AT&T Corp. v. Iowa Utils. Bd.*, 119 S.Ct. 721.737.

¹⁰⁸ See infra at 11-12.

Qwest attempts to demonstrate its compliance with checklist item 2 in part by reference to the terms and conditions found in Section 9.23 of its SGAT. These terms and conditions, however, fail to support Qwest's contention that it has satisfied checklist item 2 or is in compliance with Section 251 of the Act. Not only does Qwest's SGAT fail to conform with the requirements of the Act and FCC orders, all but one of the specified UNE combinations set forth in Section 9.23 are "under development," indicating that Qwest's SGAT does not yet amount to a specific, concrete and binding obligation to provide access to UNE combinations.

1. Section 4.60 and 4.61 Definitions

Initially, Qwest's definitions are deficient. First, Qwest's definition of "Unbundled Network Element Platform (UNE-P)" in Section 4.61 fails to include all the network elements that must ordinarily be provided as part of UNE-P. Such list should be amended to include references to the NID, Tandem Switching, Dedicated Transport, Signaling and SCPs/Databases and a reference that it includes any other network elements necessary to provide basic local exchange service.

In addition, AT&T notes that Qwest's earlier definition of UNE-P which appears in Qwest's Arizona SGAT Second Revision dated April 7, 2000, includes the word "pre-existing" in front of the word combination in the first line of this definition, but the word is not contained in the Third Revision. Qwest's definition of UNE Combination includes the word "pre-existing" before the word "combined," but in the Third Revision dated July 21, 2000, the word "pre-existing" appears to be stricken through. In Section 4.6.2, a UNE-Combination is provided in a combined state. Section 4.6.2 also "includes" only two types of combinations -- UNE-P and Private Line Combinations. The definitions should be rewritten

to eliminate any ambiguity that UNE-P and UNE-Combinations are limited to pre-existing or combined UNEs or any specific types of combinations.

2. Qwest's General SGAT Terms Applicable to All UNE Combinations

Qwest's substantive provisions relating to UNE combinations begin with Section 9.23.1. Section 9.23.1 purports to set forth the general terms applicable to all UNEs.

Section 9.23.1.2 states that Qwest will provide access to combinations of UNEs in accordance with Rule 315(b). The Ninth Circuit has determined that Rules 315(c) - (f) are not inconsistent with the Act; therefore, Section 9.23 in its entirety should be amended to include the obligations contained in Rules 315(c) - (f). Furthermore, Qwest purports to provide to the CLECs "access" to UNE combinations in Sections 9.23.1.1 and 9.23.1.2, but does not purport to provide the UNE combinations themselves. Qwest must provide CLECs with the combinations themselves, as well as access to the combinations. If the CLEC wishes to use a combination of loop and transport, the CLEC could be said to be given access to those elements at the transport end of the combination, whether at a collocation cage or at the CLEC switch. When a CLEC uses UNE-P, the CLEC is being provided the combination, not simply access to the combination. With UNE-P, the CLEC may not even have access to the combination. The provisioning may be directly to the CLEC end-user. Qwest should amend Section 9.23.1.1 as follows:

Qwest shall provide CLEC with non-discriminatory <u>combinations and/or</u> access to combinations of unbundled network elements including but not limited to the UNE-Platform (UNE-P), according to the following terms and conditions.

Qwest sets forth certain restrictions on UNE combinations in Section 9.23.1.2. The Qwest language must be replaced with language that tracks more closely with FCC orders on point. This paragraph should be modified as follows:

Qwest will offer to CLEC UNE Combinations, on rates, terms and 9.23.1.2 conditions that are just, reasonable and non-discriminatory in accordance with the terms and conditions of this Agreement and the requirements of Section 251 and Section 252 of the Act, the applicable FCC rules, and other applicable laws. methods of access to UNE Combinations described in this section are not exclusive. Qwest will make available any other form of access requested by CLEC that is consistent with the Act and the regulations thereunder. CLEC shall be entitled to access to all combinations functionality 109 as provided in FCC rules and other applicable laws. The Federal Communications Commission released its new list of unbundled network elements (UNEs) that purportedly satisfied the "necessary" and "impair" standards of Section 251(d)(2). See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 (rel. Nov. 5, 1999) (hereinafter "UNE Remand Order"). Owest will, upon request, allow CLEC to access combinations of such unbundled network elements, in accordance with 47 C.F.R. 51.315(b).

Qwest continues to impose limitations on combinations in Paragraph 9.23.1.2.1 by putting in language that will limit the CLECs' ability to obtain UNEs if FCC or state law changes. This language is similar to the language in Section 9.1.1 of the SGAT discussed above. For the reasons described above in AT&T's comment regarding Section 9.1.1 -- namely, that the section is redundant, unnecessary and unclear -- AT&T believes that Qwest's language should be deleted. In addition to these reasons, the Commission should be aware that Qwest provides no language that would add UNEs if FCC or state law expands the list of available UNEs.

In place of the language deleted in Section 9.23.1.2.1, the SGAT should include much needed language that assures the CLECs' ability to get UNE combinations:

9.23.1.2.1 In no event shall Qwest require CLEC to purchase any UNE Combinations in conjunction with any other service or element. Qwest shall place no use restrictions or other limiting conditions on UNE Combinations purchased by CLEC under the terms of this Agreement. Qwest will only provide combinations of those unbundled network elements that are currently on the FCC's then effective list of UNEs or are properly added by the State Commission according to 47 C.F.R. 51.317. Therefore, if a court of competent jurisdiction, the

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¹⁰⁹See 47 C.F.R. § 51.309.

FCC or Commission stays, vacates or modifies the effectiveness of any portion of the list of UNEs or any of the unbundling requirements, then, this Agreement shall be amended to reflect such change and that element or elements will no longer be available as part of a combination of elements. Where the Parties fail to agree upon such an amendment within sixty (60) days from the effective date of the change, it shall be resolved in accordance with the dispute resolution provision of this Agreement.

This language is consistent with 47 C.F.R. § 51.309, which prohibits the ILEC from imposing any "limitations, restrictions or requirements on requests for, or the use, unbundled network elements..." It is also consistent with 47 C.F.R. § 51.315(d).

Section 9.23.1.2.2 restricts the use of combinations by disallowing the connection of combinations to Qwest "finished services" without using collocation. This restriction is open-ended, depending on the whim of Qwest's product definitions for finished services. It negates the FCC requirement for access at any technically feasible point. Language is needed to give CLECs access to UNE combinations at any technically feasible point. The paragraph should be modified as follows:

9.23.1.2.2 At such time that CLEC provides Qwest with an order for particular UNE Combination, CLEC, at its option, may designate any technically feasible network interface, including without limitation, DS0, DS1, DS3, STS1, and OCn (where n equals 1 to 192) interfaces, and any other interface described in the applicable Telecordia standard and any other industry standard technical references. Any such requested network interface shall be provided by Owest, unless Owest provides CLEC, within five (5) days, with a written notice that it believes such a request is technically infeasible, including a detailed statement supporting such claim. Any such denial shall be resolved in accordance with the Dispute resolution process set forth in Section 5.18 of this Agreement. Unless otherwise specified, any references to DS1 in this Section 9.23 shall mean, at CLEC's option, either DS1 AMI or xDSL facility. UNE Combinations will not be directly connected to a Owest finished service, whether found in a tariff or otherwise, without going through a collocation. Notwithstanding the foregoing, CLEC can connect its UNE Combination to Qwest's Directory Assistance and Operator Services platforms.

¹¹⁰ 47 C.F.R. §§ 51.307(a) and 321.

Section 9.23.1.2.3 further reserves Owest's rights to limit UNEs if there is some change in law. AT&T notes that there is no comparable language to expand UNEs if there are changes in law. Accordingly, the paragraph is discriminatory. For this reason, and the reasons discussed above with respect to Sections 9.1.1 and 9.23.1.2.1, AT&T recommends that this language be deleted. However, because the SGAT needs language to affirmatively give the CLEC all the features of the UNE, AT&T recommends that the Owest language in Paragraph 9.23.1.2.3 be modified as follows:

9.23.1.2.3 In addition to the UNE Combinations provided by Qwest to CLEC hereunder, Qwest shall permit CLEC to combine any Network Element or network elements provided by Qwest with another Network Element, other network elements or other services (including Access Services) obtained from Qwest or with compatible network components provided by CLEC or provided by third parties to CLEC to provide Telecommunications Services to CLEC, its affiliates and to CLEC end users. If, at any time, a court, the FCC, the State Commission, or any other body of competent jurisdiction determines that a network element previously required to be unbundled under Section 251(c)(3) of the Act no longer meets the necessary or impair standards of the Act or otherwise is taken off of the UNE list, temporarily or permanently, then the 252(d)(1) prices for elements in CLEC's Agreement or Exhibit A shall no longer apply to such network element. When this occurs, Owest shall have the right to increase the price of the network element according to any and all applicable law, rules and regulations. The element will also no longer be available to be included as part of a UNE Combination.

3. Proposed General SGAT Provisions Applicable to All UNE Combinations

In addition to the provisions included by Qwest in the general terms of Section 9.23, Qwest must add additional terms to assure its compliance with the checklist item. First, CLECs need affirmative language that will allow the addition of new UNEs as they become available¹¹¹ and the ability to incorporate those UNEs into combinations. The following paragraph should be added to the SGAT as a new Section 9.23.1.3:

¹¹¹ See 47 C.F.R. § 51.317.

9.23.1.3 CLEC and Owest agree that the network elements identified in Section 9 are not exclusive and that pursuant to changes in FCC rules. State laws, or the Bona Fide Request process, CLEC may identify and request that the Owest furnish additional or revised network elements to the extent required under Section 251(c)(3) of the Act and other applicable laws. Additionally, if Qwest provides any Network Element or Combination or interconnection arrangement that is not identified in this Agreement to a requesting Telecommunications Carrier including a Qwest affiliate, to its own subscribers or to any other entity, Owest will make available the same Network Element, UNE Combination or interconnection arrangement to CLEC without CLEC being required to use the Bona Fide Request process. Failure to list a Network Element herein shall not constitute a waiver by CLEC to obtain a Network Element subsequently defined by the FCC or by the state commission. All network elements and UNE Combinations provided pursuant to this Agreement shall be provided by Qwest for the Term of this Agreement independent of any state or Federal action eliminating a regulatory obligation to provide a Network Element or UNE Combination.

Next, Qwest must add language to the SGAT to assure that CLECs have the ability to acquire combinations and to combine combinations with other unbundled elements or Qwest services. AT&T proposes that the following language be included as Section 9.23.1.4:

9.23.1.4 Notwithstanding the foregoing, without additional components furnished by the CLEC to itself or through third parties, the CLEC shall be permitted to combine network elements made available by Qwest with other contiguous Qwest network elements or Qwest Access Services provided however, that to the extent that the CLEC requests that Qwest either combine contiguous network elements or combine non-contiguous unbundled network elements in a manner different than that contemplated in Table 1 of this Section 9.23, or in accordance with efficient engineering principles, or in any previous Bona Fide Request from CLEC or any other Telecommunications Carrier, such request shall be handled through the Bona Fide Request process.

Third, Qwest must add language to assure CLECs that Qwest will provide proper demarcation points between UNEs, if desired by the CLEC. AT&T proposes that the following paragraph be added as Section 9.23.1.5:

9.23.1.5 For each Network Element ordered individually, Qwest shall provide a demarcation point (e.g., an interconnection point at a Digital Signal Cross Connect or Light Guide Cross Connect panels or a Main or Intermediate Distribution Frame) when requested by the CLEC and, if necessary, access to such demarcation point, which CLEC agrees is suitable. However, where Qwest provides a UNE

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Combination of contiguous Qwest network elements or a continuous combination of Access Services and network elements to CLEC, Qwest will provide the existing interconnections and no demarcation shall exist between such contiguous Qwest network elements.

Fourth, language must be added to the SGAT to assure that Qwest will not add "glue" charges to the combinations that it is providing to the CLEC. AT&T proposes the following language to be added as a new Section 9.23.1.6:

9.23.1.6. Qwest shall not charge CLEC an interconnection fee or demand other consideration for directly interconnecting any Network Element or UNE Combination to any other Network Element or UNE Combination provided by Qwest to CLEC if Qwest directly interconnects the same network elements or UNE Combinations in providing any service to its own end users or a Qwest affiliate, including the use of intermediate devices, such as a digital signal cross connect panel, to perform such interconnection.

Next, Qwest must include language in the SGAT that assures CLECs that Qwest will not disconnect UNEs that are currently combined unless the CLEC specifically requests that they be separated. The following paragraph must be added to the SGAT:

9.23.1.7 When ordered in combination, network elements that are currently connected and ordered together will not be physically disconnected or separated in any fashion except for technical reasons or if requested by the CLEC. Network elements to be provisioned together shall be identified and ordered by the CLEC as such. Network elements ordered as a UNE Combination shall be provisioned in combination unless the CLEC specifies that the network elements ordered in combination be provisioned separately. When existing service(s), including but not limited to Access Services, employed by the CLEC are replaced with a combination(s) of network elements of equivalent functionality, Qwest will not physically disconnect or separate in any other fashion equipment and facilities employed to provide the service(s) except for technical reasons or if requested by the CLEC. Charges for such transitioning of an existing service(s) to a combination of network elements are priced at total element long-run incremental cost as set forth in this Agreement.

Sixth, Qwest must provide language that allows CLECs to order ancillary equipment with UNEs and UNE combinations. Without this language, Qwest will be able to block a legitimate combination by refusing to provide ancillary equipment that is needed to connect

or interface between two UNEs in a combination. The best example of this would be a multiplexer, when the CLEC wants to convert from DS0 level to DS1 level, for instance. The following paragraph should be added to the SGAT:

9.23.1.8 Orders for UNE Combinations may also specify ancillary equipment (e.g., multiplexers, bridges, etc.) which, although integral to the functionality of the Network Element, may need to be specified for purposes of unbundled pricing and/or engineering of the UNE Combination. Specification of such information is not an acknowledgment on the part of the CLEC that the items specified represent separate network elements nor is it a waiver of the CLEC's right to request and have the equipment provided in the future for the then existing UNE Combination.

4. **UNE Combinations List and Applicable Standards**

Section 9.23.2 contains the specific list of the combinations that Owest is offering. CLECs should not be limited to Qwest's "products." CLECs should be able to order the combinations of unbundled elements and ancillary equipment permitted by law: all combinations of network elements and ancillary services that are currently or ordinarily combined in the Owest network, 112 or if such combination is not ordinarily combined, all combinations of elements that are technically feasible to combine. Section 9.23.2 limits CLECs to five categories of combinations. FCC rules and state law do not allow Owest to make such restrictions. AT&T will suggest additional combinations later in this affidavit, but proposes the following change to Section 9.23.2:

9.23.2 UNE Combinations are available in, but not limited to, the following five (5) categories: (i) 1FR/1FB Plain Old Telephone Service (POTS), (ii) Local Exchange Private Line (subject to the limitations set forth below) (iii) ISDN - either Basic Rate or Primary Rate, (iv) Digital Switched Service (DSS) and (v) PBX Trunks.—Owest shall not restrict the CLEC's ability to order combinations of unbundled elements and ancillary equipment unless the network elements are not ordinarily combined in Qwest's network and the combination is not technically feasible. If CLEC desires access to a different

 $^{^{112} \} Local \ Competition \ Order, \P \ 22.$

UNE Combination pursuant to 47 C.F.R. 51.315(b), CLEC may request access through the BFR Process set forth in this Agreement.

In comments below, AT&T proposes additional forms of UNE combinations. Qwest must develop generic language that does not prohibit the development of UNE combinations not enumerated under the SGAT and that also accommodates the additional combinations specified below. Qwest may need to make additional conforming changes in the SGAT to reflect the newly enumerated UNE combinations.

Section 9.2.3.1 sets forth Qwest's obligation to provide non-discriminatory access to UNE combinations. This section must be amended to require that Qwest maintains for CLECs no more service disruptions for UNE combinations than are experienced by Qwest customers using the same type of facilities.¹¹³ In addition, Qwest must provide substantially the same quality of service as Qwest provides to itself or its end users. Paragraph 9.23.3.1 should be modified as follows:

9.23.3.1 Qwest shall provide CLEC with non-discriminatory access to UNE Combinations, meaning: (a) of substantially the same quality as the comparable services that Qwest provides service to its own retail end-users, itself, its affiliates or any third person, (b) in substantially the same time and manner as the comparable service that Qwest provides to its own retail end-users, itself, its affiliates or any third person and (c) with substantially the same level a minimum of service disruption as that encountered by Qwest and its end users, itself, its affiliates or any third person using similar combinations. Notwithstanding the foregoing, Qwest shall provide access and UNEs at the service performance levels set forth in Section 20. Notwithstanding specific language in other sections of this SGAT, all provisions of this SGAT regarding unbundled network elements are subject to this requirement. In addition, U S WEST shall comply with all state wholesale and retail service quality requirements.

9.23.3.1.1 In the event Qwest fails to meet the requirements of Section
9.23.3.1, Qwest shall release, indemnify, defend and hold harmless
CLEC and each of its officers, directors, employees and agents (each an "Indemnitee) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of

¹¹³ 47 C.F.R. § 51.311(b).

any nature or kind, known or unknown, liquidated or unliquidated including, but no limited to, costs and attorneys' fees.

Qwest shall indemnify and hold harmless Indemnitees from and against any and all claims, losses, damages or other liability that arises from Qwest's failure to comply with state retail or wholesale service quality standards in the provision of unbundled network elements.

a. UNE-P-POTS

Qwest identifies one category of UNE combinations as "UNE-P-POTS. This section is not clear, and the language suggests that Qwest may withhold features from UNE-P-POTS. Qwest indicates that CLECs can order "Vertical Features." Because the term does not include a definite article ("the") or a clearer modifier ("all of the") there is some suggestion that "Vertical Features" may not include all features that Qwest customers are able to obtain on a POTS line or that must be made available under 47 C.F.R. § 51.319(c)(1)(A)(iii). The SGAT must be amended to provide that the CLECs can order any, all, or any combinations of the features, functions and capabilities of the switch.

b. UNE-P-PDX

Section 9.23.3.3 describes another variety of the UNE-P combinations, UNE-P-PDX. Qwest has apparently not yet fully defined this combination. Because Qwest must demonstrate that it has a concrete and legally binding obligation to provide a checklist item, before completing its inquiry into Qwest's compliance with this checklist item, the Commission and all parties must review Qwest's fully "developed" proposal. Qwest must list the features that can be ordered with UNE-P-PBX and those that cannot be ordered. The

Qwest capitalizes the term "Vertical Features," implying that the term is a defined term. However, the term does not appear to be defined in the SGAT.

¹¹⁵ See also 47 C.F.R. § 51.309(a). The CLEC does not lose the right to obtain all features, functions or capabilities of the switch pursuant to 47 C.F.R. § 51.319 simply because the CLEC combines the switching element with other network elements.

CLEC should be able to order any, all or any combinations of features, functions and capabilities that Qwest can provide to its customers or that is available on the Qwest switch, or by any other means.

c. UNE-P-DSS

Section 9.23.3.4 describes another variety of UNE-P: UNE-P-DSS. Like UNE-P-PDSS. Like UNE-P-PDSS, Qwest has apparently not yet fully defined this combination. Qwest must list the features that can be ordered with UNE-P-DSS and those that cannot be ordered. The CLEC should be able to order any, all or any combination of features, functions and capabilities that Qwest can provide to its customers or that is available on the Qwest switch, or by any other means.

d. UNE-P-ISDN

Another category of UNE-P identified in the SGAT is UNE-P-ISDN, set forth in Section 9.23.3.5. Like some of the other categories, Qwest apparently has not yet fully defined this combination either. Qwest must list the features that can be ordered with UNE-P-ISDN and those that cannot be ordered. Qwest seems to be restricting the vertical features that a CLEC can order for this product. Qwest states in paragraph 9.23.3.5 that "In addition, vertical features not already associated with the Digital Line Side Port are handled ICB." As is mandated by law, the CLEC should be able to order any, all or any combination of features, functions or capabilities for its customers that Qwest can provide to its customers or that is available on the Qwest switch, or by any other means. Qwest must modify this provision to eliminate the ambiguity and comply with the law.

e. <u>UNE-PL-X</u>

In Section 9.23.3.6, Qwest describes another category of UNE combination, Private Line Local Exchange UNE Combinations ("UNE-PL-X). It appears that Qwest intends that this section embody the temporary restriction on a requesting carrier's use of local exchange and exchange access services established by the FCC through its *Third Report and Order*, Supplemental Order and Supplemental Order Clarification. Qwest's language imperfectly captures the FCC's orders on this issue.

Initially, Qwest must recognize that the constraint imposed by the FCC is a temporary one designed to avoid a possible reduction in contributions to universal service prior to full implementation of access charge and universal service reform. Accordingly, the UNE Combination tentatively identified by Qwest here falls into that category of UNE combinations that (once the full restriction is eliminated), will need to be revised and broadened. Furthermore, the FCC recognized that there may be "circumstances under which a requesting carrier is providing a significant amount of local exchange service but does not qualify under any of the three options. In such a case, the requesting carrier may always petition the Commission for a waiver of the safe harbor requirements under [the FCC's] existing rules." Therefore, the SGAT should include a provision that permits CLECs to convert special access to UNE combinations if the CLEC meets the terms of a waiver granted by the FCC.

Next, in Section 9.23.3.6, Qwest has defined DS1 capable loops as the sole loop element in this category of UNE combinations. U S WEST states that "[t]he remaining

¹¹⁶ See infra, at 13-15.

Supplemental Order Clarification, \P 4.

¹¹⁸ *Id.*, ¶ 23.

standard offerings are under development. (For complete descriptions please refer to the appropriate unbundled network elements in this Agreement.) Other Private Line Local Exchange UNE Combinations (DS0 and DS3 with multiplexing) are under development."

Qwest has not provided even a meager description of other private line type combinations, such as DS0, DS3, SONET OCn. The FCC has specifically stated that ILECs like Qwest must provide the full variety of private line combinations. Qwest should clarify why it has not made these combinations available in the Third Revision of the SGAT. Ultimately, Qwest must modify the SGAT to offer these combinations and describe how they will be offered.

Although UNE-PL is the only variety of private line combination addressed in the SGAT, Qwest has not completely defined UNE-PL for DS1 in Section 9.23.3.6. Are there any limitations on where this combination can be ordered? Can it be ordered from any Point A to any Point B? Can multiplexing be added to the combination? Not only must Qwest broaden this provision to allow access to all types of private line offerings, Qwest must provide additional detail on each private line combination, including the DS1 private line combination. Once Qwest broadens and clarifies this provision, it will need to make conforming changes throughout the provisions that follow Section 9.23.3.6.

In Section 9.23.3.6.2, Qwest establishes a prohibition on use of UNE combinations when the element is "either a special access circuit or is otherwise used primarily as a basis to avoid payment of Switched Access charges." Qwest's language finds no direct support in applicable law. Further, Qwest's supposed investigation into the motive or intent of a CLEC's use as an indicator of the availability of UNE combinations is inappropriate. The

¹¹⁹ *Id.*, ¶ 22.

FCC has made it clear that, except for the specific circumstance identified in the Supplemental Order and Supplemental Order Clarification, a requesting carrier can provide any telecommunication service it wishes using UNEs in the manner the requesting carrier intends. The language in the SGAT is ambiguous as to exactly what circumstances a CLEC may obtain the UNE combinations at issue. The FCC's order is clear and precise. It does not require investigations into intent. Qwest must eliminate the terms "or is otherwise used primarily as a basis to avoid payment of Switched Access charges."

In Section 9.23.3.6.2.1, the SGAT includes a prohibition on the use of a UNE combination if private line service utilizes shared-use billing. Qwest should demonstrate where this specific prohibition is found in applicable law. If Qwest can show no such support, this provision should be deleted.

Section 9.23.3.6.2.2 identifies the three alternative "conditions" UNE-PL-X must meet for a CLEC to demonstrate that the combination is carrying a significant amount of local exchange. These "conditions" (described as options by the FCC) are found in the *Supplemental Order Clarification*. Generally, Qwest's language in this section tracks the wording of the FCC, with a couple of exceptions. In Section 9.23.3.6.2.2.2, Qwest seems to suggest that a UNE combination without multiplexing would not require collocation. Qwest should confirm the intent of the SGAT language and remove any ambiguity.

In Section 9.23.3.6.2.2.3, Qwest begins with the phrase "[f]or the conversion of services to combinations of unbundled network elements." This language does not appear in

¹²¹ Supplemental Order Clarification, ¶ 22.

 $^{^{120}}$ UNE Remand Order, \P 484.

AT&T observes without detailed comment here that both Sections 9.23.3.6.2.2.1 and .2 include the phrase "originates at a customer's premises." This language does not appear in the FCC's order. AT&T reserves a right to inquire about this wording at the workshop to determine whether it has any material effect on Qwest's UNE-PL-X offering.

the FCC's *Supplemental Order Clarification* where this option is described. Qwest should confirm its intent here. In this section Qwest proposes that local voice traffic be "measured based on the incumbent's local exchange calling area." Similarly, this provision is not included in the FCC's description of this option, and Qwest should clarify its use here.

In order to track the provisions of the FCC's orders, AT&T proposes that the first sentence of Section 9.23.3.6.2.3 be revised to read "Upon CLEC's certification to Qwest in the form of a letter that the combination of elements is carrying a significant amount of local exchange traffic, Qwest will convert a special access circuit to a UNE Combination." As discussed below, AT&T also advocates the insertion of an affirmative obligation by Qwest to convert circuits to UNEs without delay. Further, the last sentence of this section should be deleted. The FCC is clear that CLECs need not keep any records other than those they keep in the normal course of business. Accordingly, no additional affirmative obligation should be imposed on CLECs.

In Section 9.23.3.6.2.5, Qwest incorporates a provision that permits Qwest to perform audits of the CLECs records to ensure compliance. AT&T has a couple of concerns with this provision. Subsection (e) purports to allow Qwest to exercise its audit rights more frequently than once per year if an earlier audit discloses noncompliance. Qwest's assertion of a right to conduct what is implied to be a limitless number of audits in such circumstances is not contemplated by law and is unreasonable. The phrase "unless an audit finds noncompliance" must be deleted. In addition, subsection (g) needs to be clarified to provide that, although these audits are not to be counted against the parties other audit rights, Qwest's other audit rights may not be exercised for investigation into these UNE combinations. Finally, Qwest

¹²³ Supplemental Order Clarification, ¶ 32.

must specify in an additional subsection, that audits should not be used as a pre-requisite to provisioning combinations. 124

Finally, Qwest must add an additional provision that provides, in accordance with the Supplemental Clarification Order, that once a CLEC has provided self-certification that it is providing a significant amount of local exchange service, the process for conversion should be "simple and accomplished without delay." The FCC noted that requesting carriers should be allowed to use existing ordering systems, including the use of ASRs. The FCC noted that the use of ASRs will allow requesting carriers to avoid provisioning delays and unnecessary costs. Qwest must add a provision making clear that conversion will be made promptly after a CLEC self-certifies.

f. **UNE-P and Centrex**

Section 9.23.3.7 describes a mechanism for migrating from Centrex services to UNE-P. It is not clear, however, what Centrex type UNE combinations Qwest is offering. It seems that Qwest is offering a POTs replacement that is not Centrex. Centrex is a standard loop and switch port, but requires additional features in the switch. It appears that these are the exact features that Qwest is refusing to provide with the following language specified at Section .23.3.7.1: "Only vertical features may be added to the UNE-P-POTS line. Administrative controls specific to Centrex will not be converted." Paragraph 9.23.3.7.1 should be stricken and paragraph 9.23.3.7 should affirmatively provide for specific Centrex

¹²⁴ *Id.*, ¶ 31, n. 86.

¹²⁵ Supplemental Order Clarification, ¶ 30.

controls and features that are provided by the switch or by the signaling network. This is required by the FCC's rules. 126

5. Additional UNE Combinations Not Enumerated in the SGAT

Qwest is limiting UNE combinations to the set vaguely described in the SGAT. The FCC has mandated no such limitation in its orders on combinations. Additional combinations will be needed by CLECs. For example, combinations such as switch port and shared transport will be needed for CLECs that choose to provide their own loops but do not choose to provide their own switch. In addition, dark fiber can be combined with ancillary equipment and multiplexing to form dedicated transport. Qwest's insistence on defining products rather than permissively allowing legitimate combinations will continue to slow competition. Permissive language, such as that proposed earlier for Section 9.23.2, must be added to the SGAT to allow CLECs access to combinations ordinarily combined and to access technically feasible combinations that are not ordinarily combined in the network.

The language that Qwest has provided in Section 9.23.3.8 to add combinations using the BFR process is not acceptable standing alone. In the *BellSouth Louisiana II Order*, the FCC found that BellSouth had failed to meet its obligation to provide access to unbundled network elements because the terms for describing the one method provided in the SGAT to combine network elements was deficient "because it fail[ed] to include definite terms and conditions for recombining network elements." This situation is analogous. Qwest cannot meet its obligations for providing combinations by forcing CLECs to use the BFR process for many of the combinations that they need. In addition, the following combinations should be

127 BellSouth Louisiana II Order, ¶ 197.

¹²⁶ 47 C.F.R. §§ 51.309 and 51.319.

specifically added, and Qwest must provide draft language to accommodate the following forms of UNE combinations.

a. UNE-P-POTS with High Speed Data

The CLEC should be able to order UNE-P-POTS, as described earlier, with the addition of high speed, xDSL data. Qwest has admitted in Enhanced Services workshops that packet switching must be unbundled. UNE-P-POTS with xDSL would add unbundled packet switching to normal POTS.

b. UNE-P-ISDN with High Speed Data

The CLEC should be able to order UNE-P-ISDN, as described earlier, with the addition of high speed, xDSL data. Qwest has admitted in Enhanced Services workshops that packet switching must be unbundled. UNE-P-ISDN with xDSL would add unbundled packet switching to normal ISDN, BRI.

c. **CLEC Loop Termination**

CLECs will need the combination of switch port and shared transport to terminate and switch CLEC provided loops. Facilities-based CLECs will look to Qwest to provide unbundled switching in combination with shared transport to provide customer service on CLEC provided loops. It is not always economical for the CLEC to put a switch in an area.

d. Unbundled Dark Fiber Combinations

Qwest sometimes chooses to delay the expansion of capacity into a serving area.

Many of these serving areas may have dark fiber but no allocation of fiber terminating equipment. CLECs should be able to order a combination of dark fiber and multiplexing along with ancillary equipment to provide interconnection trunking, extension of loop

facilities or dedicated transport between points in the Qwest network where no such facilities currently exist.

Transport Combinations e.

The CLEC should be able to order combinations of different speeds of transport with multiplexing between them. For example, a CLEC should be able to order DS3 transport, 3/1 multiplexing, and DS0 transport as a combination. Another example would be OC3 transport, multiplexing, and DS3 transport as a combination. The SGAT section on Dedicated Transport allows the CLEC to make these combinations, using collocation and Tie Pairs. However, CLECs may desire these elements as combinations. The SGAT should be amended to provide them.

f. Enhanced Extended Loop

Qwest has placed the combination of loop, multiplexing and transport in the SGAT section on Ancillary Services. This combination is the Enhanced Extended Loop or EEL. Although the FCC declined to define the EEL as a separate network element, the FCC has indicated that the EEL is a combination of UNEs. 128 Qwest should amend the SGAT to incorporate the EEL paragraphs into the UNE section where it belongs. The EEL also will be discussed in detail below.

6. **Limitations on Order Volumes**

Qwest apparently has had difficulty in processing orders for combinations. Paragraph 9.23.3.9.7 seems to suggest that Qwest cannot routinely process more than 500 orders per month for UNE-P lines. This is unacceptable and unlawful. When AT&T fully enters a

 $^{^{128}}$ UNE Remand Order, $\P\P$ 478 and 480.

market, it would expect to process far more than 500 orders per month, and AT&T will expect the standard intervals to be met. It must be pointed out that Qwest has an obligation under checklist item 2 to provide nondiscriminatory access to its operations support systems ("OSS"). Obviously, Qwest processes more than 500 retail orders a month through its OSS. Therefore, this provision is discriminatory. This language should be deleted. Hopefully, load testing during the OSS testing will stress Qwest systems at the level of 500 orders per day, not 500 orders per month, to determine if Qwest can meet its standard intervals.

7. Customer Termination Liability

Paragraph 9.23.3.10 contains language on customer termination liability. The provision requires that all termination liabilities under any services arrangement be paid in full before an end user can be converted to a UNE combination customer of the CLEC. This provision is enormously anti-competitive. In short, this provision will prevent any CLEC from being able to obtain a customer without that customer first resolving the arrangement with Qwest *to Qwest's satisfaction*. A customer's transfer of service should not be conditioned on satisfying Qwest. This paragraph does not belong in the SGAT and should be deleted.

8. Conversion of Resale Customers to UNE-P

Paragraph 9.23.3.11 contains language describing the billing for customers that are converted from resale to UNE-P. In short, the provision will require continued billing at the resale rate until conversion is completed. In general, this type of conversion will not require facilities to be changed or modified. Since new facilities are not required, Qwest should be able to meet the standard interval. Qwest billing to the CLECs should be converted from the resale rate to the UNE-P rate on the day cutover is requested or the standard interval,

whichever is longer. There is no excuse for Qwest to be late in processing a conversion order, and certainly there is no excuse for delay in converting the billing. The present provision creates a disincentive for Qwest's prompt conversion of resale customers.

9. Forecasts for UNE Combinations

Section 9.23.3.12 should be removed from the combination section and put in the forecast section of the SGAT. Discussion of this issue should be deferred to a later general discussion

10. Limitations on UNE Switching in Combinations

Section 9.23.3.16 unlawfully imposes limitations on the use of UNE switching in some situations. Initially, AT&T notes that the FCC has never ruled that UNE-P is unavailable under the circumstances in which FCC has established the single exception to unbundled local switching. The FCC has limited the use of UNE switching in density zone 1 areas in some MSAs. As discussed above in AT&T's comments on unbundled local switching, Qwest fails to capture the effect of the FCC's order. Section 9.23.3.16 needs to be revised by Qwest to more clearly state the limitations that the FCC imposed.

11. Nonrecurring Charges for Combinations

Section 9.23.4.1.2 states the Qwest position on nonrecurring charges for combinations. Qwest essentially proposes that the nonrecurring charge for each element in a combination be assessed to the CLEC, regardless of whether or not Qwest actually does any

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¹²⁹ UNE Remand Order, ¶ 253

work. This is not just and reasonable, and falls far short of the requirements of the Act. For example, when a customer is converted from resale to UNE-P, Qwest must make a billing change. There is no work associated with the loop or the switch port, and certainly there is no work associated with shared transport. Accordingly, there should be no nonrecurring charge assessed to the CLEC for those elements.

In the recent Sprint/Qwest arbitration, the Commission rejected imposition of a separate nonrecurring charge for every network element and held that Qwest is entitled only to reasonable nonrecurring charges to provide the combinations. Qwest is once again attempting to raise the threshold for competition by increasing costs. The paragraph should be modified to limit nonrecurring costs to reasonable charges for actual work done by Qwest in combining elements. If Qwest expends resources to combine elements for the CLEC, then Qwest should be compensated for that work through nonrecurring costs. For example, if Qwest must physically combine a new loop with a new switch port, nonrecurring costs would be appropriate. In most cases, for existing combinations, no nonrecurring costs are justified.

12. Ordering System for UNE Combinations

Section 9.23.5.1 indicates that all UNE combinations will be ordered via an LSR. However, in the SGAT section on EELs, Qwest states that EELs are ordered via an ASR. The EEL is a UNE combination, very much like UNE-P Private Line. There is no explanation why one is ordered via LSR and the other via ASR. Since Qwest has admitted that a number of the UNE-P offerings are not completely defined, it seems premature to state that all combinations will be ordered via LSR. Qwest needs to clarify these requirements.

¹³⁰ Petition of Sprint Communications Company, L.P., for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with US WEST Communications, Inc., Docket Nos. T-02432B-00-0026 and T-01051B-00-0026, Opinion and Order, Decision No. 62650 (June 13, 2000) at 12.

AT&T may propose additional revisions to this Section in order to address issues clarified by Qwest.

13. Service Intervals for UNE Combinations

Section 9.23.5.3 indicates that service intervals for UNE combinations can be found in the Interconnection and Resale Resource Guide. As mentioned above and throughout this proceeding, U S WEST is in sole control of this document. Qwest's proposed standard intervals should be put into the SGAT and discussed in the workshop to assess their merits. They should not be left in an uncontrolled document, amendable at Qwest's whim. In addition, Section 9.23.5.4 states that order volumes may impact service intervals. This sentence should be removed, as it seems to give Qwest justification and approval for missing service interval dates. Qwest must scale its systems to meet service needs.

14. Changes in Service Provider

Section 9.23.5.6 establishes a process for termination of service and billing for terminated service. This section provides that: "Qwest will not provide CLEC with the name of the other service provider selected by the end user." There is no comparable provision requiring Qwest to not provide this type of information to Qwest marketing personnel. Qwest may not treat CLECs differently than it treats its own marketing organization. Qwest should modify this provision by including a statement that Qwest will not provide its marketing organization with the name of the new provider.

15. Reported Problems With Combinations

AT&T is aware of Qwest's experiences with other CLECs and, in conversations with CLECs, is aware that there are several problems with Qwest's implementation of UNE-P.

First, it seems that Qwest is not providing all features with the unbundled switch or the combination of switch and signaling. AT&T is attempting to find out from Qwest which features will not be provided. Qwest must clearly indicate to the CLECs which features will not be provided and the reason they will not be provided. Qwest must explain the technical reason for not providing the features. Second, it appears that Qwest will not have systems interfaces in place for ordering UNE-P until late in 2000 or early in 2001. This puts the testing of these features in question.

G. Enhanced Extended Loop ("EEL")

The FCC established the requirement that ILECs such as Qwest provide enhanced extended link (EEL) combinations of unbundled loop, multiplexing/concentrating equipment and dedicated transport in the *UNE Remand Order*. Qwest must provide the EEL where the EEL is currently provisioned and combined in Qwest's network. In Arizona, Qwest must also combine the elements that comprise the EEL, even if Qwest is not currently utilizing that same combination. Oddly, Qwest chooses to comply with the FCC's order on the EEL by creating a section under Section 10, the part of the SGAT Qwest has developed to describe and incorporate "Ancillary Services." The language for the EEL combination should be Section 9, Unbundled Network Elements. Qwest should also confirm that cost-based UNE rates will be applied to the EEL.

In Section 10.9.1, Qwest limits the transport for EEL to DS0, DS1 or DS3. There is no reason that OCn transport cannot be ordered by the CLEC. SONET is a typical transport method to extend loops. The FCC has stated that transport must be provided at all existing

¹³¹ *UNE Remand Order*, ¶¶ 478-482.

capacities up to OC192, and such higher capacities as they evolve over time. 132 Qwest should revise this section to permit these additional transport methods.

In Section 10.9.1.1, Qwest's advocacy is gratuitous here and is unnecessary in the SGAT. The paragraph has no operational function and carries no information regarding the provisioning of EELs.

Section 10.9.2.5 requires that the CLEC virtually collocate concentration equipment in order to provide concentration capacity. Concentration is generally the purpose of Digital Loop Carrier ("DLC"), either integrated into a switch or as stand-alone systems. DLC is a common method of aggregation of loops and is used by Qwest extensively in many locations. The Qwest requirement for the CLEC to collocate its own DLC is not efficient engineering when Qwest is already using DLC. Qwest should be required to let CLECs utilize Qwest DLC when available. When Qwest is providing service to loops over DLC, the CLEC should be allowed to use the Qwest DLC to aggregate loops onto DS1 facilities. The SGAT should affirmatively provide for this configuration, and Section 10.9.2.5 should be amended to exclude situations where Qwest is already using DLC. Furthermore, 47 C.F.R. § 315(c) obligates Qwest to perform the functions necessary to combine the elements to provide a telecommunications service.

In Section 10.9.2.8, Qwest restricts EEL service to locations where existing facilities are available. When facilities are not available for EEL service, the CLEC should be allowed to use Qwest unbundled switching in an unrestricted manner. Otherwise, the CLEC is prevented from using the EEL and unbundled switching. The FCC stated Qwest did not have

 $^{^{132}}$ UNE Remand Order, ¶ 323.

to provide unbundled switching in certain MSAs if it made the EEL available. If it does not make the EEL available, it is legally obligated to provide unbundled switching.

As described above in reference to another Section of the SGAT, EEL transport should include OCn capability. SONET transport is a common method of aggregation for loops and should be required of Qwest. EEL multiplexing should be offered at OCn rates as well. SONET Add/Drop multiplexing is needed with SONET transport. DS0 Low Side Channelization and DS0 MUX Low Side Channelization cards may already be included in the multiplexing rate elements. Qwest is assuming this is a separate element. The cost case should determine where costs for channel cards belong as part of multiplexing. Rate elements will be needed for CLEC use of Qwest concentration capability. Section 10.9.3.5 is a repeat of virtual collocation costs.

Respectfully submitted on this 21st day of September 2000.

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.

Bv:

Mary B. Tribby Richard S. Wolters Michel Singer Nelson

1875 Lawrence Street, Suite 1575

Denver, Colorado 80202 Telephone: (303) 298-6527

BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK Chairman JAMES M. IRVIN Commissioner WILLIAM A. MUNDEL Commissioner

IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S **COMPLIANCE WITH § 271 OF THE** TELECOMMUNICATIONS ACT OF 1996

Docket No. T-00000A-97-0238

VERIFICATION OF KENNETH L. WILSON

I, Kenneth L. Wilson, being duly sworn, hereby state that I am a Senior Consultant and Technical Witness with Boulder Telecommunications Consultants, LLC and have been retained by AT&T Communications of the Mountain States, Inc. and TCG Phoenix to provide expertise on technical matters in Arizona Docket No. T-00000A-97-0238. By this affidavit, I hereby verify the factual assertions as true and correct statements to the best of my knowledge and expertise in regard to AT&T and TCG Phoenix's Comments filed for the First Amended Set of Workshops on UNE Combinations, Switching, Transport, and Enhanced Extended Links.

FURTHER AFFIANT SAYETH NOT.

Dated this day of Se	eptember 2000.
	Kenneth L. Wilson

STATE OF COLORADO)
CITY AND COUNTY OF DENVER) ss)
	e me thisday of September, 2000 by Kenneth large and correct to best of he knowledge and belief.
	Witness my hand and official seal.
	Notary Public
	My commission expires:
	

CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of AT&T and TCG Phoenix's Comments on Unbundled Network Element Combinations, Switching, Transport and Enhanced Extended Links regarding Docket No. T-00000A-97-0238, were sent via overnight delivery this 21st day of September, 2000, to:

Arizona Corporation Commission Docket Control – Utilities Division 1200 West Washington Street Phoenix, AZ 85007

and that a copy of the foregoing was sent via overnight delivery this 21st day of August, 2000 to the following:

Deborah Scott
Director - Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Jerry Rudibaugh Hearing Officer Arizona Corporation Commission 1200 West Washington Street Phoenix, AZ 85007

Mark A. DiNunzio Arizona Corporation Commission 1200 West Washington Street Phoenix, AZ 85007 Christopher Kempley Arizona Corporation Commission Legal Division 1200 West Washington Street Phoenix, AZ 85007

Maureen Scott Legal Division Arizona Corporation Commission 1200 West Washington Street Phoenix, AZ 85007

and a true and correct copy of the foregoing was sent via United States Mail, postage prepaid, on the 21st day of September, 2000 to the following:

Andrew Crain Qwest Corporation 1801 California Street, Suite 5100 Denver, CO 80202

Joan S. Burke Osborn Maledon, P.A. 2929 N. Central Avenue, 21st Floor Phoenix, AZ 85067-6379 Steven R. Beck Qwest Corporation 1801 California Street, #5100 Denver, CO 80202

Timothy Berg Fennemore Craig, P.C. 3003 North Central Ave., #2600 Phoenix, AZ 85012 Thomas F. Dixon MCI WorldCom, Inc. 707 – 17th Street, #3900 Denver, CO 80202

Douglas Hsiao Rhythms NetConnections 7337 So. Revere Parkway, #100 Englewood, CO 80112

Scott S. Wakefield Residential Utility Consumer Office 2828 North Central Ave., #1200 Phoenix, AZ 85004

Michael W. Patten Brown & Bain, P.A. P. O. Box 400 2901 North Central Ave. Phoenix, AZ 85001-0400

Daniel Waggoner
Davis Wright Tremaine
2600 Century Square
1502 Fourth Avenue
Seattle, WA 98101-1688

Karen Johnson Electric Lightwave, Inc. 4400 NE 77th Ave Vancouver, WA 98662

Mark Dioguardi Tiffany and Bosco, P.A. 500 Dial Tower 1850 North Central Ave. Phoenix, AZ 85004

Alaine Miller NEXTLINK Communications, Inc. 500 108th Avenue NE, Suite 2200 Bellevue, WA 98004 Thomas H. Campbell Lewis & Roca LLP 40 N. Central Avenue Phoenix, AZ 85004

Michael M. Grant Gallagher and Kennedy 2600 North Central Ave. Phoenix, AZ 85004-3020

Charles Kallenbach American Communications Services, Inc. 131 National Business Parkway Annapolis Junction, MD 20701

Darren Weingard Stephen H. Kukta Sprint Communications Company L.P. 1850 Gateway Drive, 7th Floor San Mateo, CA 94404-2467

Bill Haas Richard Lipman McLeod USA Telecommunications Services, Inc. 6400 C Street SW Cedar Rapids, IA 54206-3177

Jim Scheltema Blumenfeld & Cohen 1615 MA Ave., Suite 300 Washington, DC 20036

Richard M. Rindler Morton J. Posner Swidler & Berlin Shereff Friedman, LLP 3000 K Street, N.W. – Suite 300 Washington, D.C. 20007-5116

Jeffrey W. Crockett Snell & Wilmer, LLP One Arizona Center Phoenix, AZ 85004-0001 Joyce Hundley United States Dept. of Justice Antitrust Division 1401 H Street NW, Suite 8000 Washington, DC 20530

Raymond S. Heyman Randall H. Warner Roshka Heyman & DeWulf Two Arizona Center 400 N. Fifth Street, Suite 1000 Phoenix, AZ 85004

Mark P. Trinchero Davis Wright Tremaine 1300 SW Fifth Ave., Suite 2300 Portland OR 97201-5682

Bradley Carroll Cox Arizona Telcom, L.L.C. 1550 West Deer Valley Road Phoenix, AZ 85027

Jonathan E. Canis Michael B. Hazzard Kelley, Drye & Warren, LLP 1200 19th Street, NW, Fifth Floor Washington, DC 20036

Karen L. Clauson Eschelon Telecom, Inc. 730 2nd Avenue South, Suite 1200 Minneapolis, MN 55402 Mark N. Rogers Excell Agent Services, L.L.C. 2175 W. 14th Street Tempe, AZ 85281

Diane Bacon, Legislative Director Communications Workers of America Arizona State Council District 7 AFL-CIO, CLC 5818 N. 7th Street, Suite 206 Phoenix, AZ 85014-5811

Robert S. Tanner Davis Wright Tremaine LLP 17203 N. 42nd Street Phoenix, AZ 85032

Gena Doyscher Global Crossing Local Services, Inc. 1221 Nicollet Mall, Suite 300 Minneapolis MN 55403

Janet Livengood Regional Vice President Z-Tel Communications, Inc. 601 S. Harbour Island Blvd. Tampa, FL 33602

Drud R. Junel